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v.2905

No. 14195

United States
Court of Appeals
For the Ninth Circuit.

ALEXANDER SWAN, 2d,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, IN BOSTON, MASSACHUSETTS,
Also Known as the Church of Christ (Scientist),
a Corporation; THE CHRISTIAN SCIENCE
BOARD OF DIRECTORS, and the CHRIS-
TIAN SCIENCE PUBLISHING SOCIETY,
a Corporation,

Appellees.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

FILED

APR 5 1954

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States, Southern
District of California, Central Division

No. 13517-C

ALEXANDER SWAN, II.,

Plaintiff,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, Also Known as THE CHURCH OF CHRIST (Scientist), a Massachusetts Corporation; THE CHRISTIAN SCIENCE BOARD OF DIRECTORS, a Juridical Entity, Recognized and Regarded as Such Under the Laws of the Commonwealth of Massachusetts as a Body Corporate; THE CHRISTIAN SCIENCE PUBLISHING SOCIETY, a Massachusetts Corporation; DOES I to X; DOE CORPORATIONS I, II, III and IV; DOE ASSOCIATION, a Non-Profit Association,

Defendants.

FINDINGS OF FACTS AND ORDER RE
MOTION TO DISMISS AMENDED COMPLAINT OR IN LIEU THEREOF TO
QUASH SERVICE OF SUMMONS
THEREON

The matter of that certain motion to dismiss amended complaint or in lieu thereof to quash service of summons upon "The First Church of Christ, Scientist, also known as The Church of

Christ (Scientist)," and "Christian Science Publishing Society" as Massachusetts corporations, together with the affidavits in support thereof and the counteraffidavits and the reply affidavits in [2*] connection therewith, together with the written points and authorities and memorandum brief in support of said motion and the opposing points and authorities and memorandum brief, came on regularly to be heard and was heard in Court No. 3 of the above-entitled Court on December 22, 1952, before the Honorable James M. Carter, Judge presiding; The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, and The Christian Science Publishing Society, an unincorporated trusteeship, appearing specially by Lindstrom and Bartlett, by Ralph G. Lindstrom, Esq., on their behalf to present said motion, and Alexander Swan, 2d, appearing by Eugene L. Wolver, Esq., to oppose said motion; evidence having been presented by written affidavits in support of and also in opposition to said motion, and written points and authorities and memorandum briefs both in support of and in opposition to said motion, and oral argument fully presented on said matters, and the Court being fully advised in the premises, now makes and enters its Findings of Facts as follows:

(1) That defendant "The First Church of Christ, Scientist, also known as The Church of Christ (Scientist), a Massachusetts corporation,"

***Page numbering appearing at foot of page of original Reporter's Transcript of Record.**

was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of August 23, 1879, as "The Church of Christ (Scientist)." That on December 2, 1889, at a duly called and regularly held meeting of the members of said church corporation it was resolved by said members that said church corporation "be and is declared dissolved and that the present Clerk of the Church be hereby requested to take the steps necessary to give legal effect to this resolution * * *." That the said authorized final step to give full legal effect to said resolution does not appear to have been taken, but that said church corporation has been inactive ever since December 2, 1889, and therefore could not have done and has not done business in California since said date, and was not doing business in California at the time of the purported [3] substituted service upon it of Amended Complaint and alias summons thereon which was delivered to a Deputy Secretary of State of California on May 26, 1952, pursuant to Amended Order made by the above-entitled Court under date of April 28, 1952, upon ex parte application therefor.

(2) That defendant "The Christian Science Publishing Society, a Massachusetts corporation," was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of April 3, 1897. That on January 21, 1898, at a duly called and regularly conducted special meeting of the members of said corporation it was unanimously voted by said members that said corporation "be dissolved and the President, Edward P. Bates, is

Christ (Scientist),” and “Christian Science Publishing Society” as Massachusetts corporations, together with the affidavits in support thereof and the counteraffidavits and the reply affidavits in [2*] connection therewith, together with the written points and authorities and memorandum brief in support of said motion and the opposing points and authorities and memorandum brief, came on regularly to be heard and was heard in Court No. 3 of the above-entitled Court on December 22, 1952, before the Honorable James M. Carter, Judge presiding; The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, and The Christian Science Publishing Society, an unincorporated trusteeship, appearing specially by Lindstrom and Bartlett, by Ralph G. Lindstrom, Esq., on their behalf to present said motion, and Alexander Swan, 2d, appearing by Eugene L. Wolver, Esq., to oppose said motion; evidence having been presented by written affidavits in support of and also in opposition to said motion, and written points and authorities and memorandum briefs both in support of and in opposition to said motion, and oral argument fully presented on said matters, and the Court being fully advised in the premises, now makes and enters its Findings of Facts as follows:

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was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of August 23, 1879, as "The Church of Christ (Scientist)." That on December 2, 1889, at a duly called and regularly held meeting of the members of said church corporation it was resolved by said members that said church corporation "be and is declared dissolved and that the present Clerk of the Church be hereby requested to take the steps necessary to give legal effect to this resolution * * *." That the said authorized final step to give full legal effect to said resolution does not appear to have been taken, but that said church corporation has been inactive ever since December 2, 1889, and therefore could not have done and has not done business in California since said date, and was not doing business in California at the time of the purported [3] substituted service upon it of Amended Complaint and alias summons thereon which was delivered to a Deputy Secretary of State of California on May 26, 1952, pursuant to Amended Order made by the above-entitled Court under date of April 28, 1952, upon ex parte application therefor.

(2) That defendant "The Christian Science Publishing Society, a Massachusetts corporation," was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of April 3, 1897. That on January 21, 1898, at a duly called and regularly conducted special meeting of the members of said corporation it was unanimously voted by said members that said corporation "be dissolved and the President, Edward P. Bates, is

hereby authorized to do all things necessary, convenient and expedient to have the said Society legally dissolved and to take all the steps necessary to wind up its affairs." That said authorized final step to give full legal effect to said resolution does not appear to have been taken, but that said publishing corporation has been inactive ever since January 21, 1898, and therefore could not have done and has not done business in California since said date, and was not doing business in California at the time of the purported substituted service upon it of Amended Complaint and alias summons thereon which was delivered to a Deputy Secretary of State of California on May 26, 1952, pursuant to Amended Order made by the above-entitled Court under date of April 28, 1952, upon ex parte application therefor.

(3) That copy of said Amended Complaint and alias summons thereon was forwarded by the said Secretary of State of California to "The First Church of Christ, Scientist, in Boston, Massachusetts," an unincorporated religious trusteeship or society, and to "The Christian Science Publishing Society," an unincorporated trusteeship, and each has a sufficient interest to appear and present this matter on the motion to quash service herein because of the connection of said old inactive corporation with their historical origin. [4]

(4) That said unincorporated religious trusteeship or society as it exists under the laws of Massachusetts is not the successor of said church corporation so incorporated August 23, 1879, and

that said unincorporated religious trusteeship or society has been neither named as a party defendant nor served with process herein.

(5) That said unincorporated publishing trusteeship is not the successor of said publishing corporation so incorporated April 31, 1897, and that said unincorporated publishing trusteeship has been neither named as a party defendant nor served with process herein.

Therefore, It Is Hereby Ordered and Adjudged:

(1) That said motion to dismiss the Amended Complaint is denied without prejudice to renewal thereof;

(2) That said motion to quash service of alias summons on said Amended Complaint upon the said named defendant "The First Church of Christ, Scientist, also known as The Church of Christ (Scientist), a Massachusetts corporation," and upon the said named defendant "The Christian Science Publishing Society, a Massachusetts corporation," and the returns thereof should be and is hereby granted as to each of said named corporations; and aforesaid service and returns thereof are quashed and for naught held;

(3) That there has been no service upon any other person or entity.

Feb. 9, 1953.

/s/ JAMES M. CARTER,

Judge, U. S. District Court.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 9, 1953. [5]

In the District Court of the United States, Southern
District of California, Central Division

No. 13,517-C

ALEXANDER SWAN, II,

Plaintiff,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, in Boston, Massachusetts, Also Known
as THE CHURCH OF CHRIST (Scientist),
a Juridical Entity, Recognized and Regarded
as Such, and as a Body Corporate, Under the
Laws of the Commonwealth of Massachusetts;
THE CHRISTIAN SCIENCE BOARD OF
DIRECTORS, a Juridical Entity, Recognized
and Regarded as Such, and as a Body Corpo-
rate, Under the Laws of the Commonwealth of
Massachusetts; THE CHRISTIAN SCIENCE
PUBLISHING SOCIETY, a Juridical Entity,
Recognized and Regarded as Such, and as a
Body Corporate, Under the Laws of the Com-
monwealth of Massachusetts; DOES I to X;
DOE CORPORATIONS I, II, III and IV;
DOE ASSOCIATION, a Non-Profit Associa-
tion,

Defendants.

SECOND AMENDED COMPLAINT
EQUITABLE RELIEF AND DAMAGES

To the Honorable Judges of the Above-Entitled
Court:

The Petition of Alexander Swan, 2d, respectfully shows: [7]

For a First Cause of Action

I.

That the plaintiff, Alexander Swan, 2d, is and at all times herein mentioned, has been a resident of and domiciled in the State of California; that the defendants and each of them, excepting only the corporate defendants, are now and at all times herein mentioned, have been and are residents of and domiciled in the State of Massachusetts.

II.

That the defendants, Does I to X, Doe Corporations I, II, III and IV, Doe Association, are sued herein under fictitious names by reason of the fact that their true names are unknown to plaintiff at this time but that leave of court is hereby asked to amend this complaint when the same are ascertained by plaintiff.

III.

That at all times mentioned herein, the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, was and now is also known as The Church of Christ (Scientist) and that at all times mentioned herein, said defendant was and now is a juridical entity, duly organized, existing, recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts.

IV.

That at all times mentioned herein, the defendant,

The Christian Science Publishing Society, was and now is a juridical entity duly organized, existing, recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts.

V.

That at all times mentioned herein, the defendant, The Christian Science Board of Directors, was and now is a juridical entity, duly organized, existing, recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts.

VI.

That at all times mentioned herein, the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian [8] Science Publishing Society, were and now are under the management, domination and control of the defendant, The Christian Science Board of Directors, and that said Board of Directors, including its present personnel or their predecessors have, at all times mentioned, exercised complete supervision, domination and control of the business policies, affairs and spiritual aspects of said defendants.

VII.

That at all times mentioned herein, the functions, intentments and purposes for which the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, was organized, continued, maintained and is now being continued and maintained, is for the fostering, maintaining, controlling and

promoting of the teaching, practicing and dissemination of that religion and science known and designated as Christian Science; a religion and science predicated upon the Bible and founded and organized by Mary Baker Eddy; that in order to do the foregoing, it is necessary to assist in the establishment of churches, maintain and supervise their religious and service rituals; assist in the financing of such churches and thereafter supervise and discipline such churches; that such churches are established, maintained, assisted in financing, supervised and disciplined throughout the world, and particularly in the United States of America, including the State of California.

VIII.

That at all times mentioned herein, the defendant, The Christian Science Publishing Society, had and now has the function, duty and purpose of selecting, approving, editing, printing and publishing of The Christian Science Quarterly, which is the Mandatory guide for the conduct of Christian Science services in said churches and contain and supervise the subject matter, comprising identical services held in such churches at given periods of time; that said defendant had and now has the additional purpose, duty and function of selecting, approving, editing and in many cases, printing and publishing books, magazines, [9] booklets, pamphlets, pictures, cards, records, instruments, documents and writings, comprising the prescribed written material that may be read, borrowed or

purchased in reading rooms maintained by said Christian Science Churches or in said churches on designated dates. That said reading rooms purchase all of their reading materials, of all types and descriptions, exclusively from said defendant, The Christian Science Publishing Society. That at all times mentioned herein, said defendant, The Christian Science Publishing Society, also prints and publishes The Christian Science Monitor, a daily newspaper of national and international circulation, having a large and extensive public circulation in the State of California; that said newspaper maintains offices for the obtaining of news, obtaining of subscriptions and advertising matter and for its distribution, two of such offices being in the State of California; that said newspaper maintains a specific portion, pages and part thereof for California advertising; that said defendant also directly solicits, sells and receives subscriptions to its periodicals, magazines, books, booklets, pamphlets, pictures, cards, records and writings; that all of the foregoing written and printed matter is continuously and regularly sold and distributed in the State of California and is continuously forwarded, transported and shipped by said defendant into said State of California, for the purpose of completing such sales and distribution.

LX.

That at all times mentioned herein, the defendant, The Christian Science Publishing Society, has and now prints and publishes The Christian Science

Journal, which is a monthly magazine containing the only published list of registered, authorized and approved Christian Science Practitioners, Christian Science teachers, Christian Science nurses and Christian Science churches and societies throughout the world, the United States and particularly in the State of California; that said list is the only list officially recognized by the defendants herein as being a list of persons authorized to practice the aforescribed [10] sciences or callings or of such churches or societies. That one of the functions, purposes and objects for which said Christian Science Journal is published, printed and distributed monthly, is to publicize and contain the advertising cards of Christian Science Churches, Christian Science teachers, Christian Science nurses and the officially recognized list of the names, addresses and telephone numbers of approved, authorized and registered Christian Science Practitioners and that the same furnishes the only available and ready list or reference of the names, addresses and telephone numbers of persons engaged in the science and calling of a Christian Science Practitioner.

X.

That at all times mentioned herein, the defendants have established and now maintain and establish, a procedure by which members of the Christian Science faith desiring to do so, may become approved, authorized and registered Christian Science Practitioners.

XI.

That at all times mentioned herein, the profession and calling of an approved, authorized and registered Christian Science Practitioner was and now is obtainable by a member of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, who has successfully pursued, completed and concluded the classes and courses of study and preparation, prescribed by the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian Science Board of Directors and who has submitted satisfactory testimony and proof to said defendant, The Christian Science Board of Directors, that such member has completed said prescribed classes, study and preparation and is otherwise qualified as an approved, authorized and registered practitioner of Christian Science, pursuant to the Church Manual and By-laws of said defendant, The First Church of Christ, Scientist, in Boston, Massachusetts.

XII.

That at all times mentioned herein, only those whose names [11] appear or appeared in the Christian Science Journal as approved, authorized and registered as Christian Science Practitioners, have been and now are recognized by the public generally, and particularly by members of the Christian Science faith, as authorized Christian Science Practitioners, whose services are endorsed by the Christian Science Church, to the public and all members of the Christian Science faith as being

qualified to perform metaphysical treatment and healing of all ailments, injuries and disease and the amelioration of personal difficulties and problems, in the manner established, prescribed and followed by the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and by the Christian Science faith; that only an approved, authorized and registered practitioner was or is subject or entitled to all of the benefits and recognition accruing to metaphysical practices under the various statutes, law or ordinances pertaining thereto and enacted by the United States, the several states and particularly the State of California; that such Christian Science Practitioner was and is required by the terms, regulations and provisions set forth in said Church Manual and Bylaws to devote substantially, all of his time, effort, energy and talent to the practice of Christian Science and, in effect, make it his means of livelihood; that in accordance with the usual custom of such Christian Science Practitioners in the world, the United States and particularly the State of California, a fee is charged for the services performed by him which fee is generally equal to that charged by the average reputable physician in the specific community or locality wherein each respective practitioner practices.

XIII.

That at all times mentioned herein, the Church Manual, more fully described as the "Manual of the Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts—Mary Baker

Eddy” has been and now is the official Bylaws of said defendants, The First Church of Christ, Scientist, in Boston, Massachusetts; The Christian Science Board of Directors and The Christian Science Publishing Society; [12] that annexed hereto and designated Exhibit “A” and by reference thereto is made a part hereof as if inserted herein in full, are the provisions and paragraphs of said Church Manual that deal with Christian Science Practitioners, the disciplining or expulsion of a Christian Scientist from the Church or for the alleged offense of misteaching of Christian Science; that the foregoing constitutes the sole and only provisions of said Bylaws that deal with the disciplining or expulsion of members of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, or of the Christian Science Practitioners belonging thereto.

XIV.

That on or about the 5th day of March, 1930, the plaintiff applied for membership in the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and that on or about the 30th day of April, 1930, plaintiff was admitted as a member in good standing of said defendant and ever since said date, has been and now is a member of said defendant, The First Church of Christ, Scientist, in Boston, Massachusetts; that during the whole of said period, plaintiff has been a good and faithful Christian Scientist and has fully complied with all

the tenets of said faith and has performed various functions in the Christian Science branch church to which he belonged, including the offices of a directors and first reader, and as such, has participated in, directed and conducted the religious services of said branch church, which branch church is a recognized branch church of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts.

XV.

That thereafter, and prior to on or about the 15th day of September, 1934, plaintiff pursued, completed and concluded the classes and courses of study and preparation prescribed by the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian Science Board of Directors, and in addition thereto, submitted to defendants, testimony and proof that he had completed said prescribed [13] courses, classes, study and preparation and was otherwise qualified as an approved, authorized and registered practitioner of Christian Science, pursuant to the Church Manual and Bylaws; that on or about the 15th day of September, 1934, plaintiff was approved and accepted by the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian Science Board of Directors as an approved, authorized and registered Christian Science Practitioner and thereafter, his name was published and printed under the authority and approval of said defendants in the monthly editions of the said Christian Science Journal, under the title and

caption of "Christian Science Practitioners and Teachers" and his name, address and telephone number was inserted thereunder; that the publication of plaintiff's said name, address and telephone number as aforesaid, continued without exception or interruption from and after said 15th day of September, 1934, until on or about the 17th day of October, 1949, and that during the whole of said period, the defendants herein did render to and charge plaintiff the prescribed annual fee and charges for the insertion and listing of plaintiff's name, address and telephone number under said classified caption as aforesaid, and that plaintiff did pay and has paid to defendants all of said charges, all of which payments were accepted, retained and kept by said defendants.

XVI.

That during the whole of the aforesaid period, plaintiff continuously held himself forth to the public and to those members thereof desiring his profession and calling as a Christian Science Practitioner and actively practiced said profession and calling and that the same was his only means of livelihood and support; and that during the whole of said period, plaintiff, by his untiring effort and loyalty toward the Christian Science faith, and by reason of the sincerity with which he practiced the same, built up a national reputation as a Christian Science Healer and Practitioner and kept and maintained offices at all times in a first-class office building, which said office was equipped [14] with authorized Christian Science books and literature

and necessary and proper furniture and furnishings; two telephone lines and the other prerequisites of a Christian Science Practitioner's office and during the whole of said period, plaintiff conducted himself as a Christian Science Practitioner with dignity, respect and in an ethical manner.

XVII.

That on or about the 12th day of September, 1949, plaintiff voluntarily requested the defendants to remove his name temporarily from said list of approved, authorized and registered Christian Science Practitioners; that said request was made to enable plaintiff to pursue and engage in further study and research in the field of Christian Science and that thereafter, plaintiff did engage and pursue study and research in said field and did further engage in expository writing pertaining to metaphysics, all of which were done between, on or about said 12th day of September, 1949, and on or about the 10th day of May, 1951.

XVIII.

That plaintiff having completed his further study and research and his said expository writing on or before the said 10th day of May, 1951, and thereafter desiring to again devote all of his time, effort, energy and talent to the practice of Christian Science and thereafter again make it the means of his livelihood and in accordance with the rules and regulations of said Church Manual and Bylaws (on

or about said 10th day of May, 1951), plaintiff made written application to the defendants for the resumption of the publication and reinsertion of his name, address and telephone number in the ensuing issues of the Christian Science Journal under the officially recognized list of "Christian Science Practitioners and Teachers."

XIX.

That continuously, from and after said 10th day of May, 1951, and in absolute disregard of the continued requests of the plaintiff to do so, defendants have failed to resume the publication and reinsertion [15] of plaintiff's name, address and telephone number in any or all of the subsequent copies of said Christian Science Journal and now continue to fail and refuse to resume such publication or reinsertion of plaintiff's name. That such failure and refusal on the part of the defendants is without just provocation or lawful reason and that no charges, accusations or other form of indictment has ever been brought against or concerning plaintiff nor has he otherwise been, by any means, deprived of his right to resume practice as a Christian Science Practitioner and that he has at all times mentioned herein, fully, lawfully, adequately and properly qualified to follow and resume his said profession and calling as a Christian Science Practitioner but that he has been unable to do so by reason of the aforesaid failure and refusal on the part of the defendants; that plaintiff, since said 10th day of May, 1951, has been unable to and now

is unable to continue or resume his said profession and calling as an approved, authorized and registered Christian Science Practitioner by reason of the aforesaid failure and refusal on the part of said defendants.

XX.

That by reason of said failure and refusal on the part of said defendants, plaintiff, since on or about said 10th day of May, 1951, has been and now continues to be deprived of his qualified and usual means and methods of livelihood and of his income and status of a Christian Science Practitioner with all of the benefits, recognition and status to which an approved, authorized and registered Christian Science Practitioner is entitled; that in addition thereto, the reputation and prestige of plaintiff as a Christian Scientist and his character and standing as a member of the Christian Science Church has been damaged, jeopardized, diminished and injured and that as the proximate result thereof, he is no longer able to attend church services or fraternize with old friends of the Christian Science faith and has thereby suffered and is suffering deep and grievous humiliation, embarrassment and [16] annoyance.

XXI.

That plaintiff has exhausted all means available to him under the Church Manual, Bylaws or established Church procedure of the defendants for the restoration, resumption and reinsertion of his name, address and telephone number in said Christian Science Journal and that plaintiff is now without

any further means, remedy or redress within the organization of any of the defendants to obtain, accomplish or acquire the said restoration, resumption and reinsertion of his name, address and telephone number in said Christian Science Journal; that plaintiff has heretofore performed all acts and things required of him by the defendants and each of them and that plaintiff is without any speedy or adequate remedy at law.

XXII.

That heretofore, many of the approved, authorized and registered Christian Science Practitioners have voluntarily caused their names, addresses and telephone numbers to be removed from said Christian Science Journal for varied periods of time during which period, they have been on Sabbatical leave, engaged in other pursuits, performed other duties for the Christian Science Church or for other reasons at this time unknown to plaintiff, they did not follow the profession of a Christian Science Practitioner for varied periods of time; that plaintiff is informed and believes and upon information and belief alleges that as to such persons upon their desiring to resume the practice of a Christian Science Practitioner, upon making their request therefore to the defendants, their names, addresses and telephone numbers were republished and reinserted thereafter in the Christian Science Journal; that plaintiff is informed and believes and upon information and belief alleges that the foregoing is a custom established and followed by the defendants.

XXIII.

That at all times mentioned herein, only approved, authorized and registered Christian Science Practitioners who are listed in said [17] Christian Science Journal have been and are recognized and enjoy the rights, privileges and license to act before or be recognized by various administrators, bureaus or officials of the Federal, State and Municipal Governments or receive the recognition and acceptance afforded expert witnesses by the various courts, both Federal, State and Municipal, or be protected by law from divulging information received in a professional capacity or be accepted as an expert or person of professional standing by public institutions, schools, hospitals or welfare institutions or by the defendants or the various branch Christian Science Churches for the performance of such functions or the making of such certifications as are usually done or required to be done by Christian Science Practitioners, all of which matters are necessary, requisite and essential to the practice of a Christian Science Practitioner or the obtaining or realization of an adequate livelihood from such practice.

XXIV.

That any attempted resumption by plaintiff of his said profession and calling as a Christian Science Practitioner would be handicapped and prevented by his name, address and telephone number not appearing in said Christian Science Journal, since he would not, by reason thereof, be able,

among other privileges, to obtain the services of a Christian Science Nurse for his patients or place or attend his patients in Christian Science Institutions or share an office or practice with an approved, authorized and registered Christian Science Practitioner, or receive State and Federal recognition, and sundry other important privileges as are accorded by the defendants and branch churches and members of the Christian Science faith to those Christian Science Practitioners listed in the Christian Science Journal, and further, persons desiring the service of a Christian Science Practitioner consults such Christian Science Journal to ascertain if the desired practitioner is approved, authorized and registered as a Christian Science Practitioner and the absence of plaintiff's name, address and [18] telephone number from said Christian Science Journal would indicate the negative thereof and that such condition is true as to former patients of plaintiff and other Christian Science Practitioners with whom he formerly had a fine and good reputation and prestige.

XXV.

That all of the aforescribed injuries and damage to plaintiff are continuing in nature and will hereafter continue and cause plaintiff further, other and additional damage until and unless plaintiff's name, address and telephone number is restored and again published and reinserted in the successive publications of said Christian Science Journal; that the amount and extent of such damage is difficult to ascertain and that damages alone are insufficient

to compensate plaintiff for being deprived of and unable to follow his usual profession and calling and make a living therefrom.

XXVI.

That all of the foregoing are to plaintiff's damage in the sum of One Hundred Thousand (\$100,000.00) Dollars.

For a Second Cause of Action

I.

Plaintiff herein realleges paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV and XXV of his First Cause of Action and by reference thereto makes the same a part hereof as if inserted herein in full.

II.

That between said 15th day of September, 1934, and said 17th day of October, 1949, plaintiff, by his learning, skill, sincerity and energy, developed, obtained, possessed and enjoyed a lucrative, profitable and ethical professional practice as an approved, authorized and registered Christian Science Practitioner; that he enjoyed a reputation as a conscientious, successful and desirable Christian Science Practitioner, [19] maintained offices in the Hollywood area of the County of Los Angeles, State of California, and developed and established a clientele, both from said County and nationwide and was called upon as such Christian Science Practitioner to conduct funeral services, attend

patients in hospitals, administer to patients at home, give moral and spiritual help and assistance to individuals confined in penal institutions, Government institutions, public institutions, soldiers' homes and quarters, adjust domestic relations, give metaphysical and Christian Science direction to fellow metaphysicians and fellow Christian Science Practitioners and in general, minister to the public in times of emergency, stress, need or desire.

III.

That during the aforesaid period, plaintiff conducted metaphysical research and study and wrote metaphysical articles accepted for public publishing; that for the period commencing on or about said 17th day of October, 1949, and on or about the 10th day of May, 1951, plaintiff studied, researched, meditated and made himself more proficient in metaphysics and Christian Science and more skillful and adept to thereafter practice the profession and calling of an approved, authorized and registered Christian Science Practitioner.

IV.

That prior to said 17th day of October, 1949, plaintiff realized and obtained from the practice of his said profession and calling, the annual sum of \$15,000.00; that plaintiff is informed and believes and upon information and belief alleges that by reason of his increased skill, knowledge and proficiency, had he been able to resume his said profession and calling, subsequent to the said 10th day

of May, 1951, he would have realized therefrom, the annual sum of \$25,000.00 and that by reason thereof, plaintiff has been heretofore damaged and will hereafter be damaged in the annual sum of \$25,000.00 or a pro rata thereof for the period that plaintiff is unable to resume or continue his said profession and calling. [20]

For a Third Cause of Action

I.

Plaintiff herein realleges paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV and XXV of his First Cause of Action and paragraphs II and III of his Second Cause of Action and by reference thereto makes the same a part hereof as if inserted herein in full.

II.

That during said period, commencing on or about the 17th day of October, 1949, and terminating on or about the 10th day of May, 1951, and in conjunction with his study and research during such period, plaintiff wrote and caused to be published, a book entitled, "God on Main Street."

III.

That in the composition and publication of said book, plaintiff steadfastly and zealously followed the precepts of the Bible and the teachings of Mary Baker Eddy contained in the Christian Science textbook, "Science and Health With Key to the Scrip-

tures'' and in her other recognized writings and her expressed expectation and permission for students of Christian Science to so write on the subject of Christian Science; and plaintiff was impelled and motivated in the writing of his book to serve and advance the cause of Christian Science in the accomplishment of the following aims and purposes:

(a) To present to that large majority of plaintiff's fellow Americans firstly, and a large majority of all humanity secondly, who have been and are prejudiced against Christian Science, in a manner that would be entertaining, appealing, understandable and readily acceptable, the teachings, precepts, purposes and blessings of Christian Science and the ministry of Jesus Christ.

(b) To present religion in a practical and understandable way in order to reach the substantial portion of our population who are Church Members but who may be sporadic Church attendants. [21]

(c) To present the principle of Christian Science to the clergy of all faiths so that they may fulfill completely, the demands of Jesus and reiterated by Mary Baker Eddy to not only preach and teach but to exemplify the healing Christ-spirit that will change their congregations' poverty into plenty, their despondency into joyousness, their sickness into health and their faith into fact.

(d) To present the principles of Christian Science to the medical profession as the bridge between science, theology, medicine and man.

IV.

That on or about the 21st day of July, 1950, plaintiff completed his manuscript of said book and on or about said date, advised the defendants of the existence of such manuscript and offered and tendered to said defendants, a copy of such manuscript for the purpose that they might examine the same; that continuously thereafter, the defendants and each of them, refused, failed and neglected to receive, accept or examine such manuscript or any part thereof, nor did said defendants or any of them communicate with or advise plaintiff of any desire on their part in regard to or concerning said book or the publication thereof.

V.

That after the lapse of several months, plaintiff caused said book to be printed and published and that during the month of February, 1951, he caused said book to be copyrighted and that during said month, he caused a copy of said book to be sent and transmitted to the defendants.

VI.

That plaintiff is informed and believes and upon information and belief alleges that commencing prior to the 10th day of May, 1951, and continuously thereafter, the defendants and each of them, unlawfully, maliciously, deliberately, wilfully and with cause, conspired amongst themselves and each other, to hinder, delay and deny circulation [22] of said book, "God on Main Street" amongst the members of the Christian Science faith and among members

of the public generally and that during the whole of said period, said defendants have and continue, to, by means of such conspiracy, hinder, delay and deny such circulation of such book and its message to its members of the Christian Science faith and to the public generally, and have impugned and villified to the members of the Christian Science faith and to the public generally, the character, motives, ethical and professional standing of plaintiff in a manner calculated and intended to injure, diminish, harm and destroy the value and status of such book, both as a property and as a religious treatise and all of the gains, profits and benefits that might be thereafter received, had or obtained by plaintiff by reason thereof.

VII.

That at all times mentioned herein, the defendants were the vendors, sellers and distributors of literature, written reading matter and books to its various branch churches, the reading rooms thereof and various book stores and vendors of literature, written reading matter and books; plaintiff is informed and believes and upon information and belief alleges that said defendants informed and notified or caused to be notified or informed, said branch churches, reading rooms, book stores and sellers of literature, written reading matter and books; that they should not thereafter exhibit, purchase, acquire, sell or distribute plaintiff's said book, "God on Main Street" and that said defendants informed or caused said churches, reading rooms and sellers of

literature, written reading matter and books that their purchase, sale or distribution of said book would cause the displeasure of defendants and that defendants would thereafter fail, refuse and neglect to subsequently furnish them with its literature, written reading matter and books upon which said branch churches, reading rooms, book stores and sellers of literature, written reading matter and books were dependent and which were requisite to the maintaining of their establishments; plaintiff is further informed and believes and upon information [23] and belief alleges that at said time, said defendants informed or caused to be informed, said branch churches, reading rooms, book stores and sellers of literature, written reading matter and books, that plaintiff was not an approved, authorized and registered Christian Science Practitioner; that he theretofore had been but was no longer such an approved, authorized and registered Christian Science Practitioner.

VIII.

That in furtherance of said conspiracy, the defendants and each of them, at a time or times, place or places, at this time unknown to plaintiff, refused and caused to be refused, lawful advertising matter theretofore tendered and being tendered to the Christian Science Monitor, an international newspaper of general circulation and published by the defendants, which advertising matter was concerning and in furtherance of the sale and distribution of said book, "God on Main Street"; that plaintiff is informed and believes and upon information and

belief alleges that the failure and refusal of the defendants to reinsert and republish his name, address and telephone number in said Christian Science Journal, as hereinbefore more fully alleged, was by reason of and in furtherance of said conspiracy.

IX.

That all of the aforescribed acts on the part of the defendants were without cause, justification or provocation and were arbitrary, unwarranted, willful and malicious.

X.

That plaintiff's said book, "God on Main Street" is an explanation and dissertation of, on and concerning the beliefs and teachings of Christian Science and that said book's acceptance by the public in general and members of the Christian Science faith is dependent upon the status and position of plaintiff as an approved, authorized and registered Christian Science Practitioner.

XI.

That by reason of the foregoing, the sales and public [24] returns of plaintiff's said book have been diminished, lessened, hampered and decreased, all to plaintiff's damage in the sum of \$100,000.00.

XII.

That all of the aforesaid acts on the part of the defendants were done for the purpose of oppressing plaintiff and were actuated by malice on the part of the defendants, by reason of which, plaintiff

is entitled to exemplary damages in the sum of \$50,000.00.

Wherefore: Plaintiff prays:

1. That the defendants and each of them be required by an order of this court requiring that they forthwith cause to be reinserted and republished, the name, address and telephone number of plaintiff as an approved, authorized and registered Christian Science Practitioner in the Christian Science Journal and that the same be not removed therefrom and hereafter, except for cause or provocation.

2. That plaintiff recover damages from the defendants in accordance with his First Cause of Action in the sum of \$100,000.00.

3. That plaintiff recover damages from the defendants in accordance with his Second Cause of Action in the sum of \$25,000.00 per annum.

4. That plaintiff recover damages from the defendants in accordance with his Third Cause of Action in the sum of \$100,000.00, together with punitive damages in the further and additional sum of \$50,000.00.

5. For plaintiff's costs and disbursements necessarily incurred herein.

6. For such other and further relief as to the court may seem meet and just.

/s/ EUGENE L. WOLVER,

Attorney for Plaintiff. [25]

EXHIBIT A

Paragraphs and Provisions Dealing With
Christian Science Practitioners
(From Church Manual)

Article VIII.

Use of Initials "C.S."

Section 21. A member of the Mother Church shall not place the initials "C.S." after his name on circulars, cards, or leaflets, which advertise his business or profession, except as a Christian Science practitioner.

Practitioners and Patients

Section 22. Members of this Church shall hold in sacred confidence all private communications made to them by their patients; also such information as may come to them by reason of their relation of practitioner to patient. A failure to do this shall subject the offender to Church discipline.

Article XI.

Departure from Tenets

Section 1. If a member of this Church shall depart from the Tenets and be found having the name without the life of a Christian Scientist, and another member in good standing shall from Christian motives make this evident, a meeting of the Board of Directors shall be called, and the offender's case shall be tried and said member exonerated, put on probation, or excommunicated.

Violation of Bylaws

Section 2. A member who is found violating any of the Bylaws or Rules herein set forth, shall be admonished in consonance with the Scriptural demand in Matthew 18:15-17; and if he neglect to accept such admonition, he shall be placed on probation, or if he repeat the offense, his name shall be dropped from the roll of Church membership.

Preliminary Requirement

Section 4. No Church discipline shall ensue until the requirements according to the Scriptures, in Matthew 18:15-17, have been strictly obeyed, unless a Bylaw governing the case provides for immediate action.

Authority

Section 5. The Christian Science Board of Directors has power to discipline, place on probation, remove from membership, or to excommunicate members of The Mother Church. Only the members of this Board shall be present at meetings for the examination of complaints against Church members; and they alone shall vote on cases involving The Mother Church discipline.

Article XII.

Misteaching

Section 2. If a member of this Church is found trying to practice or to teach Christian Science contrary to the statement thereof in its textbook, Sci-

ence and Health With Key to the Scriptures, it shall be the duty of the Board of Directors to admonish that member according to Article XI, Sect. 4. Then, if said member persists in this offense, his or her name shall be dropped from the roll of this Church.

Duly verified.

[Endorsed]: Filed February 18, 1953. [26]

[Title of District Court and Cause.]

NOTICE OF MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT, OR IN LIEU
THEREOF TO QUASH SERVICE OF
PROCESS THEREUPON

To: Alexander Swan, 2d, above-named plaintiff, and
Eugene L. Wolver, Esq., his attorney:

Please Take Notice That (1) The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, purportedly sued and served erroneously herein as "The First Church of Christ, Scientist, in Boston, Massachusetts, [59] also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts"; (2) Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a self-perpetuating group of individuals

who are the trustees for said religious trusteeship or society, purportedly sued and served erroneously herein as "The Christian Science Board of Directors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts"; and (3) The Christian Science Publishing Society, a trusteeship, purportedly sued and served erroneously herein as "The Christian Science Publishing Society, a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts," by their undersigned counsel, will each appear specially for the purpose of these motions, and, as to each so specially appearing, will move the above-entitled Court in the Courtroom of Honorable James M. Carter, U.S. District Judge, Courtroom No. 3, Second Floor, U.S. Post Office and Court House Building, 312 North Spring Street, Los Angeles, on Monday, the 29th day of June, 1953, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, pursuant to Rule 12(b) (1), (2), (4), (5) and (6) as follows:

1. To dismiss this action as to each defendant on the ground that the Court is without jurisdiction because of failure of plaintiff to show diversity of citizenship within the meaning of U.S. Constitution, Article III, section 2, paragraph 1, and within the meaning of the Judiciary Code, 28 U.S.C.A., section 1332 (a) (1).

2. To dismiss the action for lack of jurisdiction over the person of said named parties defendant,

and each of them, (a) on the ground that none of them is a legal entity with capacity to be sued in California on the purported cause of action alleged in plaintiff's complaint, and (b) on the further ground, that none of [60] said parties defendant is amenable to service of process within the State of California.

3. To quash service of process upon said defendants, and each of them, upon the grounds that said process is insufficient and that said purported substituted service of process is neither authorized nor valid in the type of action purportedly alleged against any of said defendants.

Said three motions above will be based upon the records, papers and files herein, particularly the following affidavits:

(a) Affidavit of Leonard T. Carney, filed November 20, 1951;

(b) Affidavit of Kimmis Hendrick, filed November 20, 1951;

(c) Affidavit of Elizabeth McArthur Thomson, filed August 8, 1952;

(d) Affidavit of Gordon V. Comer, filed August 8, 1952;

(e) Affidavit of George Wendell Adams, filed November 6, 1952;

(f) Affidavit of Elizabeth McArthur Thomson, filed November 6, 1952;

(g) Affidavit of Hazel A. Firth, filed November 6, 1952;

(h) Affidavit of Gordon V. Comer, filed November 6, 1952;

(i) Affidavit of Arthur W. Eckman, filed November 6, 1952;

together with the following affidavits filed and served concurrently herewith:

(a) Affidavit of Clayton B. Craig;

(b) Affidavit of John H. Hoagland;

(c) Affidavit of Walter A. Dane;

(d) Affidavit of Arthur W. Eckman;

together with Memorandum of Points and Authorities filed and served concurrently herewith. [61]

4. To dismiss the Second Amended Complaint, and each alleged count thereof separately, against said parties defendant on the ground that the Court lacks jurisdiction over the subject matter alleged in each of said counts, and further that each count fails to state a claim upon which relief can be granted.

Said fourth motion will be based upon the Memorandum of Points and Authorities served and filed concurrently herewith, and upon the records, papers and files herein.

Dated: June 10, 1953.

LINDSTROM AND
BARTLETT,

By /s/ RALPH G. LINDSTROM,

Attorneys for The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts; The Christian Science Board of Directors of said Church; and The Christian Science Publishing Society.

Affidavit of Service attached.

[Endorsed]: Filed June 11, 1953. [62]

[Title of District Court and Cause.]

AFFIDAVIT OF WALTER A. DANE

Commonwealth of Massachusetts,
County of Suffolk—ss.

Walter A. Dane, of lawful age, being first duly sworn, deposes and says:

That in 1912 he was duly admitted to practice law before the Courts of the Commonwealth of Massachusetts and in 1915 before the Federal Courts [64] in said Commonwealth and is an active member of the Bar of the Commonwealth of Massachusetts, practicing before all of the courts of said Commonwealth and before the Federal Courts, including the Supreme Court of the United States.

That affiant has represented The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, as well as the trustees of The Christian Science Publishing Society, in litigation before the

highest judicial courts of the Commonwealth of Massachusetts, and he is familiar with the historical origin and organization of their religious activities.

That affiant represented the Trustee-Directors as parties defendant in *Dittemore vs. Dickey, et al.*, 1924, 249 Mass. 95, and in *Eustace vs. Dickey, et al.*, 1921, 240 Mass. 55, wherein the then Chief Justice of the Supreme Judicial Court of Massachusetts construed the founding Deed of Trust dated September 1, 1892, by Mary Baker Eddy to Ira O. Knapp, et al., as establishing a self-perpetuating group of trustees now known as The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, for administering the ecclesiastical organization and affairs of said Church; that said Court further construed the founding Deed of Trust dated September 25, 1898, by Mary Baker Eddy to Edward P. Bates, et al., as establishing a religious trusteeship to conduct the business or activity known as The Christian Science Publishing Society for the actual and avowed purpose of "more effectually promoting and extending the religion of Christian Science," and said Court also held that said Church was the beneficiary of said publishing trust. The Supreme Judicial Court of Massachusetts stated at page 69 of the *Eustace* case:

"The master also has found that the church has never become incorporated but has continued from the first an unincorporated religious association."

That affiant has more recently represented the trustees of said The Christian Science Publishing Society in litigation before the said [65] Supreme Judicial Court of Massachusetts in *Assessors of Boston vs. Lamson, et al.*, 1944, 316 Mass. 166, wherein the said Court again affirmed that said publishing trusteeship operated and used its property for religious purposes, and that all of its general publications were religious publications, including The Christian Science Monitor, a daily newspaper of international circulation, in that the dominant purpose of the trustees in publishing said newspaper is "to serve the religious cause of Christian Science" and that it "is a missionary organ serving to carry the name and principles of Christian Science to all parts of the world and to cultivate good will for the Christian Science movement." That in said case it was held that the property of said publishing trusteeship was exempt from property taxes within the meaning of the statutory exemption which exempted principal or income of personal property owned by, or held in trust for, religious organizations if "used or appropriated for religious, benevolent, or charitable purposes."

That affiant further affirms that in his opinion said Trustees-Directors of said Church could not, at the time of said litigation, nor can either now, be sued under the laws of the Commonwealth of Massachusetts as a legal entity except in the limited field concerning vesting of rights in consequence of any gifts or grants made to them, for which purpose, and for which purpose alone, they are deemed a

body corporate or corporation under Chapter 68 of Massachusetts General Laws, Title XI, entitled "Certain Religious and Charitable Matters," which statutes are no part of the corporation laws of the Commonwealth of Massachusetts. Chapter 68, Section 1 of General Laws (formerly Pub. Stat., Ch. 39, Sec. 1) and Section 12 (formerly Stat. of 1811, Ch. 6, Sec. 3) have been the law of the Commonwealth without substantial change for more than 100 years.

The Supreme Judicial Court of Massachusetts, in *Silsby vs. Barlow*, 1860, 16 Gray (82 Mass.) 329, referred to the earlier statute now embodied in said Section 12 as follows:

"Originally all our religious societies were corporate [66] bodies. The towns at first exercised parochial powers, most of the people of this state being of one denomination. But as varieties of opinion sprang up, it became necessary to separate the parochial from the municipal business, and the parishes formed separate organizations. Other religious societies were incorporated by special acts; but many congregations remained unincorporated. Some persons had conscientious scruples against corporations, and others preferred to manage their religious affairs in a different way. The St. of 1811, c. 6, section 3, was enacted for the benefit of such persons. It enabled unincorporated religious societies to take and hold property, manage, use and employ the same, choose trustees, agents and officers therefor, and constituted them corporations so far as might be necessary."

The higher court also spoke of the statute preceding Section 12 as follows in *Glendale Union Christian Society v. Brown*, 1872, 109 Mass. 163, saying that "it originated in the fact that many persons entertained conscientious objections against corporations for religious purposes, as they existed * * * such societies need not adopt all the regulations that govern incorporated societies, and may take and hold property without it."

In *First Baptist Church of Sharon v. Harper*, 1906, 191 Mass. 196, 77 N.E. 778, the Supreme Judicial Court of Massachusetts says (page 206 of the Official reports) that, by the statutes which antedated Section 12 of said Chapter 68: "* * * an unincorporated religious society was enabled to acquire, use and enjoy property in the same manner as if duly incorporated * * *. The effect of these enactments is that for the purpose of taking, holding and transmitting property a voluntary religious society possessed all the qualifying attributes of a duly organized corporation."

As recently as 1951, the Supreme Judicial Court of Massachusetts [67] stated in *MacGregor vs. Comm. of Corp.*, 327 Mass. 484, 99 N.E. (2d) 468, 469-470:

"Voluntary associations were not regarded at common law as legal entities and so could not as such take title to real or personal property either for their own benefit or in trust for others * * * The gifts, however, would not fail for want of a trustee, and any technical

difficulty that might exist as to the legal title might easily be removed by the appointment of a trustee * * * Unincorporated religious societies have long enjoyed the power to acquire and dispose of property. G. L. (Ter. Ed.), c. 68, section 1."

That under and by virtue of said statutes, all of which stand unrepealed as of this date, and said decisions of the highest court of the Commonwealth of Massachusetts, none of which has been thereafter modified or overruled, it is the law of the Commonwealth of Massachusetts that:

(1) The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, is deemed a body corporate or corporation for the sole and only purpose of "taking and holding in succession all gifts, grants, bequests and devises of real or personal property" to them, or to their Church;

(2) In all and every other respect than specified in (1) hereinabove, said Trustee-Directors and said Church are respectively an unincorporated trusteeship and an unincorporated religious society; and

(3) Said The Christian Science Publishing Society is solely and wholly a trusteeship and not a body corporate or corporation for any purpose whatsoever.

/s/ WALTER A. DANE,

Affidavit of service attached.

[Endorsed]: Filed June 11, 1953. [68]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN H. HOAGLAND

Commonwealth of Massachusetts,
County of Suffolk—ss.

John H. Hoagland, of lawful age, on his oath being first duly sworn, deposes and says:

That he is and at all times commencing and since 1944 has been, General Manager of The Christian Science Publishing Society, a trusteeship comprised of Elizabeth McArthur Thomson, [71] James G. Rowell and Leonard T. Carney, as Trustees thereof, under and pursuant to deed of trust by Mary Baker Eddy, Trustor, dated September 25, 1898; that as such, and under said Trustees, and through the various departments of said Publishing Society under his direction, he has general management of all affairs, transactions, customs, procedures and practices of said Publishing Society and has direct knowledge thereof;

That The Christian Science Monitor is one of the publications of said Publishing Society, being an international daily newspaper founded by Mary Baker Eddy who stated in her work The First Church of Christ, Scientist, and Miscellany, "The object of the Monitor is to injure no man, but to bless all mankind." That the purpose of said newspaper is part and parcel of the general evangelical purpose of The Christian Science Movement which is to heal mankind of sin, sickness, discord, disease and death, among men and in the business and

political community of the world, on a wholly spiritual basis, and to such ends, one of said Monitor purposes is to pioneer wholly constructive and healing purpose, in, and presentation of, the news of the world, and through the type of advertising carried in its columns; that said Monitor has on average operated at a cost greater than total receipts, for the primary reason that whenever its operation has shown greater receipts than costs, the area of its news gathering throughout the world has been enlarged and improved to the end of greater efficiency in its basic and general purpose of healing and spiritualization of thinking throughout the world. That The Christian Science Monitor, as such international daily newspaper has a world-wide corps of correspondents located in all the capitals and important news centers of the world. It also takes the full service of the Associated Press. Its policy and practice are against emphasis being laid upon matter involving crime, scandal and sensation, and in its editorial matter emphasis is laid upon its conception of moral issues [72] in favor of temperance, peace and social justice. Its foreign news is regarded generally as reliable and is customarily read by many who are not Christian Scientists as well as by those who are.

That The Christian Science Monitor is circulated in 120 different countries throughout the World, and carries a religious article daily based on the teachings of Christian Science and this article is translated into fifteen different languages, one trans-

lation of which appears in nearly every issue of The Monitor. These translations of the religious articles are designed to enable people of practically all nationalities in various parts of the World to read them; that no news service is sold by The Monitor.

That a system of leased wires, wireless service and telegraphic loops connects this paper's own distant news bureaus and special correspondents with the home office. Its news content is more than 65% of the whole paper, and is fundamental and educational in character. The Christian Science Monitor on religious grounds declines at least 50% of the advertising which the ordinary newspaper accepts. For example, The Monitor as a matter of policy does not accept advertising of the following commodities: liquor, tobacco, tea, coffee, medical, surgical or hygienic articles; food products, soaps or other commodities when advertised on a health basis; hotel, resort or travel advertising employing a health appeal; Sunday theatricals; complexion preparations claiming medicinal qualities; tombstones, cemeteries, dentists, oculists, collection agencies, oil or mining propositions, animals in captivity, illustrations or text representing life or health depending upon weather conditions; securities of promotional enterprises; investment of capital wanted; and illustrations showing use of tobacco or liquor.

Such advertising is considered by the Christian Science Board of Directors to be incompatible with the principles of Christian Science and with the

terms of the Trust Deed under which the paper is published. [73]

That in publication of said Monitor in Boston, said Publishing Society maintains a news bureau in Los Angeles, California, with another bureau in San Francisco; that said bureaus are wholly and solely news gatherers, and no attache or employee whomsoever within California does, or can do, more than submit to the editorial department in and at Boston, Massachusetts, proposed news items and articles, the use or rejection of which is wholly and solely determined at Boston, Massachusetts; that the book review editor of said Monitor is in and at Boston, Massachusetts, and the question of whether any given book shall be reviewed, and whether any proffered advertising of any book or commodity shall be accepted or rejected for and by said Monitor, is wholly and solely determined at Boston, Massachusetts.

That no department of said Publishing Society sells any of its publications or related evangelical material, including said Monitor (excepting only subscriptions received by mail and accepted at Boston for periodicals which are transmitted directly to subscribers by United States mail) at any point, in any manner or to any purchaser or subscriber within the State of California save and except to separately organized and independently existing branch churches (generally incorporated as religious corporations) and societies within California which are recognized as such independently existing and independently governed branch churches

and societies by The Mother Church; that none of the publications of said Publishing Society is published in California, but are all published at Boston, Massachusetts; that specifically also all editions of The Monitor, including the Pacific Coast Edition (so designated solely by news content emphasis) is edited and published in and mailed from, Boston, Massachusetts, and not elsewhere; that any sales of publications and related evangelical material of said Publishing Society within California are wholly and solely by said branch churches and societies and the reading rooms maintained by said [74] branch churches which purchase the same for resale and sell the same in California; that the street sales of said Monitor are by branch churches and committees thereof, said branch churches purchasing said Monitors as they do all other Publishing Society items, from said Publishing Society and then selling the same as is done by any other news vendors; that the Publishing Society maintains no stock of its publications or related evangelical or other material whatsoever within the State of California, but receives orders therefor at Boston, which orders are accepted and filled and shipped in interstate movement thereof to, and are directly delivered in, California;

That branch churches and societies in California, when formally organized, become religious corporations and societies under the laws of California, and are in no manner subsidiaries or agents or otherwise associated in the affairs of or in sales or distribution of publications of said Publishing Society

save as prior purchasers and subsequent vendors thereof, and as subscribers thereto, all of which such branches do through branch church and society committees and reading rooms, independently controlled and separately operated by each branch church or society independently and for itself.

That in said California bureaus said Publishing Society also maintains an advertising solicitation service, for solicitation of advertising in said Monitor; that such solicitors have no authority to fix rates or to contract for advertising in said Monitor either in classified or display type thereof, but all orders therefor are proposals only and are accepted or rejected in the advertising department of said Publishing Society, at Boston; that while payments for classified advertising, being comparatively small sums, are sometimes delivered as a convenience to such solicitors and by them forwarded to Boston, all billings for all other advertising are made and sent from, and payable at, Boston; that no contract was ever made nor could the same have been made, within the State of California or [75] elsewhere than at Boston for any proposed advertisement of any book such as the book by plaintiff described as written by him; that no listing in The Christian Science Journal as a Christian Science practitioner, by plaintiff or any other person whomsoever, could have been authorized or contracted for, and none has ever been so authorized or contracted for, within the State of California nor elsewhere than at Boston, Massachusetts;

That no attache or employee of said Publishing Society in said bureaus or otherwise in California is employed by or paid by anyone within California, but each and all are employed at and paid from Boston, Massachusetts; that all contracts for rental of office space for said Los Angeles and San Francisco bureaus and all purchases of any and all main items of equipment and supplies and all other expenses in operation of said bureaus by said Publishing Society in California are contracted at and paid from Boston Massachusetts; that while said advertising solicitors and said news bureaus have petty funds out of which to pay petty items, such as postage and minor items of stationery supplies immediately required, all other items are purchased by and paid for, or sent, from, the Boston offices of said Publishing Society.

That the total number of employees of said Publishing Society located in California is 15, of which 12 are in the Los Angeles bureau and 3 in said San Francisco bureau; that all budget and managerial decisions related to operation and maintenance of said bureau are made by said Trustees and affiant and attaches under both at Boston, and are not made within nor by employees within California; that all complaints or adjustments thereof are made at and from Boston and not within California.

That said Publishing Society transacts no business of any kind or nature within the State of California; that the activities of said Publishing Society, as also those of said The Christian Science Board of Directors and said The First Church of

Christ, Scientist, in [76] Boston, Massachusetts, within the State of California, are wholly and solely religious and evangelical presentation and application of the teachings of Christian Science as taught by Mary Baker Eddy, to the physical, mental, moral, political, business and all other problems of mankind and humanhood and not otherwise.

That in sum the whole and sole purpose of all publications of said Publishing Society, including said Monitor, is healing and evangelical, so that beginning with the first issue, every issue of said Monitor has carried, in the place selected by her therefor, the motto also selected by Mary Baker Eddy, which reads: "First the blade, then the ear, then the full grain in the ear."

Further affiant saith not.

/s/ JOHN H. HOAGLAND.

Verified.

Affidavit of Service attached.

[Endorsed]: Filed June 11, 1953. [77]

[Title of District Court and Cause.]

AFFIDAVIT OF CLAYTON B. CRAIG

Commonwealth of Massachusetts,

County of Suffolk—ss.

Clayton B. Craig, being first duly sworn, deposes and says: [84]

1. That affiant is and has been for about five years one of the five trustees known as "The

Christian Science Board of Directors," which is the name of the self-perpetuating group of five trustees who conduct the religious affairs and activities of The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, pursuant to Deed of Trust dated September 1, 1892, made and executed by Mary Baker G. Eddy, in favor of Ira O. Knapp, et al., and under and pursuant to the provisions of the Church Manual of said Church.

2. That true copy of said Church Manual is marked and attached as "Exhibit A" to the affidavit of Gordon V. Comer filed August 8, 1952, in this action, and true copy of said Deed of Trust is therein set forth at page 128, et seq., and the same are hereby incorporated herein by reference thereto the same as though marked and attached as exhibits hereto.

3. That affiant is chairman of The Christian Science Board of Directors, and the other four trustees are

George Wendell Adams,
Francis L. Jandron,
Alfred Pittman,
L. Ivimy Gwalter.

4. That "The First Church of Christ, Scientist, in Boson, Massachusetts" is the name given to the members or congregation of said church trusteeship or society, as provided in said founding Deed of Trust dated September 1, 1892.

5. That all the activities or business of The First Church of Christ, Scientist, in Boston, Massachusetts, and its trustees, The Christian Science Board of Directors, are solely and exclusively the "Father's business" as set forth by Christ Jesus in His statement to His parents in Luke 2:49, "Wist Ye not that I must be about my Father's business," which business or evangelical activity is designed to redeem and save all mankind from sin, sickness, and [85] death, and to establish the Kingdom of God or Heaven on earth.

6. That one of the related activities of said Church and Directors is "The Christian Science Publishing Society," created by Mary Baker Eddy, the Discoverer and Founder of Christian Science, by a Deed of Trust dated January 25, 1898, in favor of Edward P. Bates, et al., as trustees; true copy of said Deed of Trust is marked "Exhibit A" and attached as exhibit to the affidavit of Elizabeth McArthur Thomson filed August 8, 1952, in this action, and the same is hereby incorporated herein by reference thereto the same as though marked and attached as exhibit hereto; that said Deed of Trust named three grantees-trustees and provided for self-perpetuation of the trusteeship; and the three trustees are known as the Board of Trustees whose duties are to conduct the activities and business of said Publishing Society for the promotion of the interests of Christian Science as founded and taught by Mary Baker Eddy. Although "The Christian Science Board of Directors," under the Manual of The Mother Church, have the power of removal of

Trustees of said publishing trusteeship, and, in accordance with said Deed of Trust dated January 25, 1898, and said Church Manual, all net receipts realized by the operation of said publishing trusteeship are payable to the Treasurer of The First Church of Christ, Scientist, in Boston, Massachusetts. every six months to be disbursed in accordance with the direction of the trustee-directors of said Church for religious purposes, nevertheless said Trustees of said publishing trusteeship are otherwise left free to discharge their functions pursuant and subject to the said Manual and the Deed of Trusts creating said trusteeship.

7. That local churches and societies are known as branch churches and societies in the Christian Science Movement; they are, and each of them is, democratically conducted, and said The Mother Church, under its said Manual, assumes no general control thereof, but each such branch church has "its own form of government" and [86] "each branch church" is "distinctly democratic in its government * * * and no other church shall interfere with its affairs," as provided in Sections 1 and 10 of Article XXIII of said Church Manual; that in no sense do branch churches or societies, in California or anywhere, represent The First Church of Christ, Scientist, in Boston, Massachusetts, in any subsidiary or agency capacity whatsoever. That neither The First Church of Christ, Scientist, nor the Christian Science Board of Directors assists in the establishment of branch churches, in California or anywhere, nor in maintenance or supervision of

their religious services or activities; that Reading Rooms of branch churches, in California and elsewhere throughout the world, are activities of and solely conducted by said branch churches exclusively, and wholly separately and apart from either of said trusteeships; that neither the Directors nor said Mother Church assists in the financing of such branch churches (building fund assistance being wholly separate and apart by the Testamentary Trustees under the will of Mary Baker Eddy), nor does either The First Church of Christ, Scientist, or The Christian Science Board of Directors supervise any branch church in California or anywhere. Branch churches are organized and established through the initiative of their own members and simply are authorized and recognized by said The Mother Church through its The Christian Science Board of Directors and thereby come to be known as Christian Science branch churches when and only so long as they meet the standards and provisions of said Manual of The Mother Church.

8. That neither The First Church of Christ, Scientist, nor The Christian Science Board of Directors supervise services in branch churches in the State of California or anywhere, and there is no per capita tax payable or paid by any branch church or society to The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts; that only the members of The Mother Church, as such, pay a per capita tax to said Church, as required by Section 13 of Article VIII of The Mother Church Manual. [87]

9. That neither The Christian Science Board of Directors, nor The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, nor said Publishing Society, has acquired by purchase, nor otherwise than by devise or bequest, any real estate within the State of California; nor has any thereof acquired any encumbrance on real property in California except as part of disposition of real property so devised.

10. That determination of who shall be advertised and listed in The Christian Science Journal is wholly and solely done at Boston, in the Commonwealth of Massachusetts, by The Christian Science Board of Directors and by attaches in the Boston offices of said Board; and is in no manner determined by any person or agency within the State of California.

/s/ CLAYTON B. CRAIG.

Subscribed and sworn to before me this 4th day of June, 1953.

[Seal] /s/ MARY E. TYLER,
Notary Public in and for the County of Suffolk and
Commonwealth of Massachusetts.

My Commission Expires May 25, 1956.

Affidavit of Service attached.

[Endorsed]: Filed June 11, 1953. [88]

[Title of District Court and Cause.]

AFFIDAVIT OF ALEXANDER SWAN

State of California,

County of Los Angeles—ss.

Alexander Swan, 2d, first being duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action. That ever since the 30th day of April, 1930, affiant has been and now is a member in good standing of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and has pursued and followed the faith of a Christian Scientist.

That on or about the 15th day of September, 1934, plaintiff pursued and completed classes and courses in the study and preparation as a Christian Science Practitioner. That such courses were given by a teacher, approved by the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts. That affiant personally paid fees for such instruction, which were paid to such teacher [90] and were retained by such teacher as his compensation. That upon the completion of such courses and the submission of testimony and proof thereof, affiant became qualified as a Christian Science Practitioner. That a Christian Science Practitioner follows a professional calling and maintains an office, either by himself or with other Christian Science Practitioners, paying or sharing in the paying of the rent therefor. That such practitioner or practi-

tioners furnish to themselves, necessary telephone service, professional cards, professional stationery and pay for the same. That in addition, they personally acquire the furniture that is used in such office and pay for such books and literature as are used and necessary for the conduct of such practice. That in the following of such calling, the practitioner attends to the needs of his patients and of persons calling upon him for metaphysical assistance; that persons who come to his office as the result of personal contact or by reference from other patients or friends. That no person is sent to him as the result of any church procedure and that the good-will and integrity of the practitioner, are the controlling situations that cause patients to seek his assistance. That there is no direct or indirect control over him by the First Church of Christ, Scientist, in Boston, Massachusetts, nor is he at any time subject to the direction or supervision of said Church or its officials other than he is subject to the bylaws of said organization providing for his discipline in the event of any professional transgression.

That upon a practitioner qualifying as to his education and character, his name, address and telephone number is inserted in the "Christian Science Journal," under the title and caption of "Christian Science Practitioners and Teachers." That persons desiring the professional service of a Christian Science Practitioner refer thereto for the purpose of selecting and obtaining the names, addresses or telephone numbers of the same or ascertaining that

such [91] Practitioner is recognized as qualified by the First Church of Christ, Scientist, in Boston, Massachusetts.

That a Christian Science Practitioner is privileged to make a reasonable charge for the services rendered by him, which charge is discretionary with him and that the fee received therefore is solely his property. That he keeps such office hours as he desires and may accept or reject rendering professional assistance to any person applying therefor. He may move or change his office or location at will, open such office or abstain therefrom for such periods he desires; accept or reject patients and gratuitously render services or make such charges as deems to be proper and reasonable, the proceeds thereof being solely for his benefit.

That the foregoing was the procedure followed by affiant during the period of his practice as a Christian Science Practitioner. That during the sixteen years affiant practiced as a Christian Practitioner he had no contact with or was contacted by said First Church of Christ, Scientist, in Boston, Massachusetts.

That on or about the 15th day of September, 1934, plaintiff's name, address and telephone number was first published in the "Christian Science Journal" under the title and caption of "Christian Science Practitioners and Teachers."

That in church matters, Christian Science Practitioners as such, are no different than any other members of the church. He does not, as such, participate in any church or religious service; he is

not a minister, nor ordained as such, nor is he authorized to perform any civil or religious wedding service or baptismal service. The religious services of a Christian Science Church are conducted by two "Readers." As a member of the church, a Christian Science Practitioner is eligible to be elected a "Reader," since any member of the church is similarly eligible thereto. He is not recognized by civil authority as a religious leader or minister, his only limited recognition being by certain county and state [92] departments, wherein his statements, affidavits or testimony are accepted for and on behalf of a Christian Scientist, as in similar situations where the statements, affidavits or testimony of doctors, or the like, are accepted on behalf of non-christian scientists.

That a Christian Science Practitioner is an individual, independent professional calling in the field of Christian Science, unrelated to and independent of any church functioner, the conduct of Christian Science religious services. That neither the following of such a profession nor the discontinuation or resumption thereof, is any part of a church function, nor requires church approval.

That the Manual of the defendant, First Church of Christ, Scientist, in Boston, Massachusetts, which is therein designated and which is in fact the By-laws of such defendant, provides in Sect. 23 as follows:

"If a member of this Church has a patient whom he does not heal, and whose case he can not fully diagnose, he may consult with an

M.D. on the anatomy involved. And it shall be the privilege of a Christian Scientist to confer with an M.D. on Ontology, or the Science of being."

That in the book, "First Church of Christ, Scientist, and Miscellany," by Mary Baker Eddy, which book is used as authority by the defendants, it is provided on page 237 under the designation of "Practitioners' Fees," as follows:

"Christian Science Practitioners should make their charges for treatment equal to those of reputable physicians in their respective localities."

That in answer to the affidavit of Clayton B. Craig, affiant alleges that such affidavit is inaccurate and incorrect, and particularly that Paragraph "8" thereof contained on Page "4," [93] Line "27" is inaccurate in that the The First Church of Christ, Scientist, and the Christian Scientist Board of Directors do supervise and absolutely control services in the branch churches in the State of California and elsewhere in that said defendants prescribe at each of such churches a uniform reading of the Scriptures and other religious books, which indication of reading cannot be deviated from, modified or supplemented. In addition said defendants maintain full supervision over the policy and manner of the conducting of all Christian Science activities in all branch churches, leaving to the branch churches only the details and methods by which such pre-

scribed policies shall be performed. These include activities of church committees, procedure as to all religious services and also the conducting of reading rooms.

That branch churches do pay a per capita tax to said defendants, based upon the number of membership. That in addition thereto, the members of the branch churches, who are members of the defendant, First Church of Christ, Scientist, in Boston, Massachusetts, pay their respective dues to the church.

That Paragraph "9" found on Page "5," Line "1," is inaccurate and incorrect in that the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, has and does make loans of various monies to branch churches to assist in the building of church edifices and does make arrangements with such branch churches for the repayment of such loans of monies advanced. Said defendant has accepted real estate loans, trust deeds with incomes therefrom, and has made investments and purchases as well as sold various forms of securities in the State of California and elsewhere.

That the affidavit of Walter A. Dane is inaccurate and incorrect in the following matters. That the defendant, The Christian Science Publishing Society, is not exempt from personal property taxes in the State of California and that said defendant [94] has been charged with, billed for and has paid personal property tax upon such property owned and used by it in said State, and particularly in the

County of Los Angeles and the City and County of San Francisco, in which two counties such personal property is situated.

That the defendants, The First Church of Christ, Scientist, and the Christian Science Board of Directors, have made or caused to be made loans as a Massachusetts "body corporate" to branch churches in the State of California, which loans have been recorded in the official records of the Office of County Recorders in the various counties of the State of California.

That the affidavit of John A. Hoagland is inaccurate and incorrect in the following particulars. That contrary to the statements contained on Page "3," Line "24" thereof, earlier editions of "The Christian Science Monitor" contained paid advertisements of health resorts and dentists. That contrary to statements contained on Page "4," Line 27, said defendant The Christian Science Publishing Society does sell and offer for sale books and literature other than those published by itself and includes the sale of such books and literature to branch churches for sale in the respective reading of such churches. They also and likewise furnish to such branch church reading rooms for sale by it various and sundry items such as book ends, literature carrying cases, pictures and geographical atlases, which are neither published nor manufactured by said defendant.

That contrary to the statements contained on Page

“5,” Lines 7 through 9, the defendants The Christian Science Publishing Society has and does maintain merchandise inventories in the County of Los Angeles and the City and County of San Francisco, in the State of California, in conjunction with its branch offices in such cities and is taxed therefor by the Tax Assessors of said respective counties as the owner of such inventories consisting of [95] personal property.

That contrary to the statements contained on Page “5,” Line 17, et seq., reading rooms of branch churches are strictly supervised by the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, must be maintained and administered in accordance with the regulations and policies prescribed by said defendant.

/s/ ALEXANDER SWAN, 2D,
Affiant.

Subscribed and Sworn to before me this 31st day of August, 1953.

[Seal] /s/ EUGENE WOLVER,
Notary Public in and for Said
County and State.

[Endorsed]: Filed September 1, 1953. [96]

Receipt of Copy acknowledged.

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN H. HOAGLAND

Commonwealth of Massachusetts,
County of Suffolk—ss.

John H. Hoagland, being first duly sworn, deposes and says; [98]

1. That affiant is now and has been for about nine (9) years the Manager of The Christian Science Publishing Society and in his capacity as Manager he has all of the responsibilities and performs the usual duties incident to such a position in a large printing and publishing concern in cooperation with the Trustees of The Christian Science Publishing Society and affiant makes this affidavit in connection with the above-entitled court cause, reaverring all pertinent matters set forth in his affidavit of June 8, 1953, filed herein.

2. That affiant, as such Manager of The Christian Science Publishing Society, supervises and directs all sales and shipments of books, periodicals, printed matter, etc., issued or sold by the Society and is kept informed at all times of the merchandise inventories of the Society. Based upon this knowledge, affiant avers that there are no merchandise inventories or stock of the Publishing Society now on deposit or in storage in the State of California and particularly he avers that no such inventories or merchandise are on deposit or in storage in the Cities of Los Angeles and/or San Francisco, and

that there have been no such inventories of merchandise in storage or on deposit anywhere in the State of California since his incumbency as Manager, and from an examination of the books, records and files of the Publishing Society he avers that there has never been any such merchandise inventories in storage or on deposit in said State of California.

3. That in the Cities of Los Angeles and San Francisco, California, certain personal property taxes have been paid annually on desks, chairs, and office fixtures belonging to The Christian Science Publishing Society and typical tax returns and receipted bills relating to such taxes for the year 1953 are hereto attached, marked "Exhibit A" and are hereby made a part of this affidavit as fully as if set forth herein. That the tax returns and receipts for tax payments for prior years are on deposit in The Christian Science [99] Publishing Society files and in no instance do they, nor do those that are attached as "Exhibit A" hereto, list any inventory of stock for tax purposes in said State of California. That affiant further avers that as and when orders for merchandise are received by The Christian Science Publishing Society at the office thereof, One Norway Street, Boston, Massachusetts, they are filled from stock and merchandise inventories located in Boston, Massachusetts and are shipped directly to the California consignee to fill such orders.

4. That affiant avers that The Christian Science

Publishing Society sells and offers for sale Science and Health with Key to the Scriptures by Mary Baker Eddy, the Bible, the established periodicals of the movement and printed matter prepared and published by the Publishing Society or by other printing and publishing organizations under express contract as listed in its stock catalogue, a copy of which is hereto attached and marked "Exhibit B," and all such printed matter by virtue of such sale and offering for sale constitutes authorized literature of the Christian Science movement pursuant to Article XXV (especially Section 8) and Section 3 of Article XXI of the Manual of The Mother Church. That all such books, periodicals and printed matter as are sold either set forth the established doctrine and teachings of the religion of Christian Science or are Bibles, Bible dictionaries and Bible concordances which aid the students of Christian Science in understanding and applying the teachings, or Word of God, according to the doctrine of Christian Science.

That affiant denies that said Publishing Society sells or offers for sale to branch church Reading Rooms items such as book ends, geographical atlases, etc., and avers that the carrying cases and Quarterly covers offered for sale and sold are relatively inconsequential in number and in the proceeds received therefrom and such carrying cases and Quarterly covers are used generally by Sunday School teachers and pupils as a means of carrying the Bible, the [100] Quarterly and Science and

Health with Key to the Scriptures back and forth from Sunday School sessions.

6. That affiant further avers that neither he nor anyone connected with The Christian Science Publishing Society or The First Church of Christ, Scientist, in Boston, Massachusetts, supervise strictly or otherwise the Reading Rooms of branch churches but that such branch church Reading Rooms are wholly the responsibility of the respective branch churches and are conducted and maintained by each of such branch churches pursuant to the provisions of Article XXI of the Manual of The Mother Church.

7. That there have been written, printed and published in more recent years many articles, writings and books purporting to contain ideas, statements or philosophy designed to elucidate, simplify, or modify the teachings and doctrine of authorized Christian Science as discovered and established by Mary Baker Eddy, but while some of these articles, writings or books may not deviate from sound doctrine and teaching they are wholly unauthorized and none of these articles, books or writings are offered for sale or sold by the Christian Science Reading Rooms of the movement (Article XXIII, Section 3, The Mother Church Manual). That plaintiff's book, "God on Main Street," which contains the author's concept of some of the teachings of Christian Science, is in no way discriminated against by not being sold or offered for sale by

The Christian Science Publishing Society and the
Christian Science Reading Rooms.

Further affiant saith not.

/s/ JOHN H. HOAGLAND.

Verified.

Affidavit of Service attached.

[Endorsed]: Filed September 17, 1953. [101]

[Title of District Court and Cause.]

AFFIDAVIT OF ALFRED PITTMAN

Commonwealth of Massachusetts,
County of Suffolk—ss.

Alfred Pittman, being first duly sworn, deposes
and says: [134]

1. That affiant is and has been for about six (6) years one of the five trustees known as "The Christian Science Board of Directors," which is the name of the self-perpetuating group of five trustees who conduct the religious affairs and activities of The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, pursuant to Deed of Trust dated September 1, 1892, made and executed by Mary Baker G. Eddy in favor of Ira O. Knapp, et al., and under and pursuant to the provisions of the Church Manual of said Church.

2. That true copy of said Church Manual is

marked and attached as "Exhibit A" to the affidavit of Gordon V. Comer filed August 8, 1952, in this action, and true copy of said Deed of Trust is therein set forth at page 128, et seq., and the same are hereby incorporated herein by reference thereto the same as though marked and attached as exhibits hereto.

3. That affiant is now the Chairman of The Christian Science Board of Directors and the other four trustees are:

George Wendell Adams

Francis L. Jandron

L. Ivimy Gwalter

Clayton B. Craig

4. That "The First Church of Christ, Scientist, in Boston, Massachuetts" is the name given to the members or congregation of said Church trusteeship or society, as provided in said founding Deed of Trust dated September 1, 1892.

5. That the healing ministry of physical ills and diseases in Christian Science by Christian Science practitioners, whether listed in The Christian Science Journal or not, is strictly a religious rite, ceremony, or practice since fundamentally it consists of prayer to God, or the Supreme Being, or by whatever name God is called; and the fact that a practitioner is compensated for his services directly by the patient seeking his aid rather than by way of church salary [135] as is a minister, priest, or rabbi, is only incidental and such financial trans-

action does not constitute a commercial transaction. The payment of such fees follows the Scriptural teaching that a "labourer is worthy of his hire" and Jesus' admonition to his disciples when he sent them into the world to heal the sick, cast out devils, and raise the dead in his name. (Matt. 10:5-10) that the healing practice is not a commercial or money-making activity, notwithstanding the fact that the practitioner receives just and fair compensation for his services. The term "class instruction" in Christian Science means a two weeks' course of intensive teaching and study by an authorized Christian Science teacher and a group of thirty Christian Scientists, and is intended to develop and increase one's understanding of the teaching, doctrine, and practice of Christian Science regardless of the human or vocational activities of the pupil, and only in relatively few cases do such students take up regular healing practice as a Christian Science practitioner. Such instruction and study is wholly religious in its character, purpose, and implication although, of course, intellectual and educational advantages of a general character accrue from such class instruction or systematic teaching. Such teaching or class instruction does not alone qualify one to do the healing works of Christ Jesus' ministry either as a Journal-listed practitioner or otherwise since spiritual growth and understanding are fundamental to such healing practice and can be gained only through earnest, consecrated study and practice of the teachings of Christian Science. It is a notable fact that many adherents of the

Christian Science Church practice the healing ministry for themselves and others while engaged in other vocations and usually successful practitioners with ability to heal the sick gradually evolve into the full-time healing ministry as Christian Science practitioners as their spiritual growth and understanding enlarge. In this way practitioners prove by their works to the satisfaction of The Christian Science Board of Directors their eligibility [136] for listing in The Christian Science Journal. While there are many similarities between Christian Science practitioners and our friends of the medical profession, exact analogies cannot be drawn and healing by prayer or spiritual means as practiced by a Christian Science practitioner can never become a money-making commercial activity or merely a means of gaining a livelihood.

6. That branch Christian Science churches and societies are initiated and evolve as democratic organizations and are strictly based upon "grass-roots" beginnings and in no sense are they founded, established, or supervised and conducted by hierarchical authority. The Manual of The Mother Church constitutes the discipline and basic ecclesiastical law and authority for branch churches and societies. The practices, provisions, and procedures set forth in Articles XXIII and XXXV of the Manual of The Mother Church and of other Articles and terms thereof relate primarily to an organized and orderly method by which branch churches and societies as formed may be recognized by The

Mother Church so as to be listed in The Christian Science Journal. That while there are certain provisions of the Manual authorizing and directing The Christian Science Board of Directors to supervise within the terms of the Deed of Trust and Manual such branch churches and societies, The Mother Church has no control whatever of the internal branch church affairs nor does it have any property interest in or control over the property, real or personal, or the temporalities of the branch churches and societies, and in this connection this affiant adopts and reavers all of the allegations of the affidavit of Clayton B. Craig, filed herein dated June 4, 1953, with special emphasis on paragraphs 5, 6, 7 and 8 thereof.

/s/ ALFRED PITTMAN.

Verified.

Affidavit of Service attached.

[Endorsed]: Filed September 17, 1953. [137]

[Title of District Court and Cause.]

AFFIDAVIT OF GORDON V. COMER

Commonwealth of Massachusetts,
County of Suffolk—ss.

Gordon V. Comer of the City of Boston, Commonwealth of Massachusetts, being first sworn, deposes and says:

1. That he is and has been for more than five years last past a resident of the City of Boston, Commonwealth of Massachusetts, and for the same time and period has occupied and now occupies the office of Clerk of The First Church of Christ, Scientist, in Boston, Massachusetts, (an unincorporated religious society, association or trusteeship) under and pursuant to the provisions of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, which Manual contains the fundamental law, rules, bylaws, and polity of said Church; and that as such Clerk he performs the duties and exercises the authority vested in him under said Church Manual, a copy of which is hereto [164] attached, hereby made a part hereof and marked "Exhibit A."

2. That the "Church of Christ, (Scientist)" was organized as a corporation pursuant to the corporation laws of the Commonwealth of Massachusetts on the 23rd day of August, 1879, and for a period of approximately ten years thereafter operated, functioned and carried on as a religious corporation doing those things only which were incident to the conducting of religious activities and services of a Christian church in the Commonwealth of Massachusetts.

3. That said "Church of Christ, (Scientist)" the Massachusetts corporation, was on the 2nd day of December, 1889, at a meeting of the members thereof duly called and regularly held dissolved by

a vote of the corporation, a certified copy of which vote is hereto attached, hereby made a part hereof and marked "Exhibit B."

4. That between said date of disincorporation to wit the 2nd day of December, 1889, and the 1st day of September, 1892, the "Church of Christ, (Scientist)" conducted services and carried on its religious activities as an unorganized or unincorporated religious association or society.

5. That on the 1st day of September, 1892, Mary Baker G. Eddy made, executed and delivered a deed of trust to Ira O. Knapp, et al., as trustees, certain real property in the City of Boston on which the original church edifice of said Church was thereafter erected and now stands, by which deed of trust and Church Manual, "Exhibit A" as above recited, the legal structure of said "Church of Christ, (Scientist)" was established as a trusteeship or unincorporated religious association or society (see copy of said deed of trust in "Exhibit A," Church Manual, page 128, et seq.); and that ever since said date of September 1, 1892, to this date said "Church of Christ, (Scientist)" now The First Church of Christ, Scientist, in Boston, Massachusetts, as it came to be designated at that time, has operated and carried on in all respects as an unincorporated religious association [165] or society; and that notwithstanding the fact that the proper officer of the incorporated Church failed or omitted to take the appropriate steps following the adoption of the vote to dissolve, to effect a cancella-

tion of record of the corporate charter of said "Church of Christ, (Scientist)" the corporation in truth and in fact did cease to exist, and since the adoption of said vote to dissolve on the 2nd day of December, 1889, said corporation has never owned any property of any kind whatsoever, has had no officers or directors as an incorporated entity under the corporation laws of Massachusetts or of any other state or governmental authority, nor has said incorporated Church carried on or maintained any activities as a corporation under the corporation laws of the Commonwealth of Massachusetts or any other state or governmental authority.

6. That The First Church of Christ, Scientist, in Boston, Massachusetts, ever since September 1, 1892, has in all respects operated, carried on and maintained all of its activities as an unincorporated religious trusteeship, association or society; and that the Board of Trustees of said unincorporated trusteeship is designated as "The Christian Science Board of Directors" and deemed under Chapter 39 of the Public Statutes of Massachusetts for certain specified purposes to be a body corporate (see "Exhibit A," page 130, paragraph 1, and footnote).

7. That there is attached hereto, made a part hereof and marked "Exhibit C," a photostatic copy of the envelope directed by Frank M. Jordan, Secretary of State of the State of California, to said The First Church of Christ, Scientist, in Boston, Massachusetts, One Norway Street, Boston, Massachusetts, in which was enclosed an Amended

Complaint and Alias Summons in the above-entitled litigation and the original of the photostatic copy of attached letter from said Jordan to said The First Church of Christ, Scientist, in Boston, Massachusetts, dated May 29, 1952, which copy of letter is hereby made a part hereof and marked "Exhibit D"; and that affiant for [166] himself, his associates and said The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious society or association, avers and declares that the action of plaintiff herein in seeking to subject to the jurisdiction of this Court the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious association or trusteeship is ineffective and of no avail.

Further affiant saith not.

/s/ GORDON V. COMER,
Clerk.

Subscribed and Sworn to before me this 19th day of June, 1952.

[Seal] /s/ MARY E. TYLER,
Notary Public in and for the Commonwealth of
Massachusetts.

My commission expires 25th day of May,
1956. [167]

CERTIFICATE

Hazel A. Firth, Manager of Executive Office of The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, and custodian of the minute books and records of said Church:

Hereby Certifies: That the attached Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, is a true and correct copy thereof and constitutes the law, rules, bylaws and polity of the Christian Science religious denomination.

[Seal] /s/ HAZEL A. FIRTH,
Manager of Executive Office.

Dated June 19, 1952.

[Endorsed]: Filed August 4, 1952. [168]

[Title of District Court and Cause.]

MEMORANDUM DECISION

Four motions have been submitted for decision:

(1) To dismiss the action as to each defendant on the ground the court is without jurisdiction because of failure of the plaintiff to show diversity of citizenship;

(2) To dismiss the action for lack of jurisdiction over the person of each defendant, (a) on the ground that none of defendants are legal entities

with capacity to be sued in California on the purported causes of action set forth in plaintiff's complaint; and (b) on the further ground that none of the defendants is amenable to process within the State of California, viz, is not doing business in California;

(3) To quash service of process upon the defendants on the ground that said process is insufficient and that the purported substituted service of process (on the California Secretary of State) is neither authorized nor valid in the type of [453] action here presented;

(4) To dismiss the second amended complaint and each count thereof against the parties defendant, on the ground (a) that the court lacks jurisdiction over the subject matter alleged in each of the said counts, and (b) on the further ground that each count fails to state a claim upon which relief can be granted.

I.

Diversity of Citizenship

Whether the trust entities in Massachusetts are citizens, is an interesting question. As to a corporation, nothing less than a de jure existence satisfies the diversity requirement. *Great Northern Fire Proof & Hotel Co. v. Jones*, 177 U. S. 449.

The character of the organization or entity is to be determined by the law of the state which gave it birth. *Thomas v. Ohio State University*, 195 U. S. 207.

While unincorporated associations are not citizens and under the diversity rule and we must look to the citizenship of the members, there is apparently no authority as to whether a trust created by statute and considered by statute to be a "body corporate" is such a citizen.

Chap. 68 of the Annotated laws of Massachusetts, authorizes the defendants, the First Church of Christ, Scientist, and the Christian Science Board of Directors [hereafter referred to as the religious entities] to exist as entities at least for limited purposes. It characterizes them as "bodies corporate."

Chap. 182 of the Annotated laws of Massachusetts authorizes the familiar "Mass. Trust" and makes it amenable to [454] process and suit "in a like manner as if it were a corporation." Probably the defendant, The Christian Science Publishing Company, comes within this category.

The first two defendants, the religious entities, have heretofore qualified to do business in California in like manner as corporations, and made the necessary filing with the Secretary of State [Sec. 6403 Corp. Code.] Thereafter, and before the start of the present litigation, these defendants withdrew and terminated their qualification with the Secretary of State. This prior filing was at least an admission by such defendants of their status as corporate entities of the State of Massachusetts.

The court is not without doubt as to its decision but concludes the three defendants are corporate bodies of the State of Massachusetts at least for limited purposes. We do not reach the question of

the extent of such purposes on this motion. Accordingly, the motion to dismiss counts 1, 2, & 3, of the second amended complaint, based on lack of diversity of citizenship, is denied.

II.

Lack of jurisdiction because:

(a) Defendants are not legal entities with capacity to be sued in California, and

(b) Are not doing business in and are not amenable to process in California.

Again we must proceed largely on logic and not on settled case law. What was said under Point I applies here.

We look to the Massachusetts statute and case law as to the status of these defendants, and so disregard Sec. 388 CCP of California. We disregard also the cases involving unincorporated associations and trade unions. These [455] clearly do not concern "entities" or "bodies corporate."

Assuming that there is corporate entity of the two religious bodies under Massachusetts law for a limited purpose, it does not logically follow that these enties were unable to act outside this purpose or act in substance illegally. The automaton is created; it does not always respond as its creator intended.

Corporations with limited purposes are common. In fact there are limits to the purposes of every

corporation. Many cases could be cited as to the amenability of corporations to process, who acted outside or beyond their stated purposes.

True, these religious entities were created "bodies corporate" by statute for limited purposes only. Likewise every corporation is created for certain stated and limited purposes so such a contention brings us nowhere.

Again, the court is not without doubt but holds that the motion to dismiss the action on the ground that none of defendants are legal entities with capacity to be sued, is denied.

Doing business in California

We are met at the threshold with the fact that the first two defendants considered (the religious bodies) heretofore qualified with the California Secretary of State. This was an admission that they were then doing business in California.

The record shows no changes in activities since the withdrawal of the qualifications. If they were doing business then, they are doing business now.

To plaintiff's showing that defendants are doing business there is the reply, "We are doing only God's business." [456] We question the sufficiency of this reply in a legal sense.

The file shows numerous real estate transactions engaged in by the two religious entities. Admittedly these entities deal with real and personal property acquired by gift or devise. Admittedly they super-

wise California branch churches, (which are separate legal entities or associations.)

They have appeared in local courts in connection with such property matters and have objected to allowances of attorneys' fees, etc. The religious entities have thus sought the protection of our courts. " * * * Manifest injustice [] would ensue if a foreign corporation permitted by a state to do business therein and to bring suits in its courts, could not be sued in those courts, while allowed the benefits, be exempt from the burdens * * *." *Barrow Steamship Co. v. Kane* (1897), 170 U.S. 100.

As to the third defendant, the showing is clearer. The Christian Science Publishing Company publishes the Christian Science Monitor. The affidavits of John H. Hoagland filed June 11, 1953, in behalf of defendants, show that the Christian Science Publishing Company is doing business in California. The Monitor has a corps of news gatherers throughout the world, including California. It maintains a news bureau in Los Angeles and San Francisco. It sells its publications to branch churches and stores. They in turn distribute the paper. The Monitor publishes a Pacific coast edition and runs advertising from California. The California bureaus solicit advertising in California which is accepted in Massachusetts. Under the decisions, the place of acceptance is of no great moment. There are 15 employees in California, paid from Massachusetts.

Whether a corporation is doing business in Cali-

ifornia is a question of state law, not federal law. [457]

Erie RR Co. v. Tompkins,
(1938) 304 U. S. 64;

Perkins v. Louisville & N.R. Co.,
(D. C. So. Cal. 1951); 94 F. Supp. 946.

Tested by California cases :

Boote's Hatcheries & Packing Co. v. Superior
Court,
(1949) 91 C. A. (2) 526;

Sales Affiliates, Inc., v. Superior Court,
(1950) 96 C. A. (2) 134;

Thew Shovel Co. v. Superior Court,
(1939) 35 C. A. (2) 183;

West Publishing Co. v. Superior Court,
(1942) 20 Cal. (2) 720,

the court concludes defendants were doing business in California.

The court again is not without doubt but holds that the motion to dismiss the action on the ground defendants are not doing business in California, is denied.

III.

The service by substitution on the Secretary of State.

Sec. 6504 Corporation Code provides only for service on a corporation or a joint stock company or an association doing business in this state. Do these trust entities come within the statute?

The Secretary of State heretofore accepted the qualifications of the two religious entities under the Code Section. Actions by an administrative or executive agency in handling the law it administers may be looked to for interpretation of the meaning or scope of the law.

Since under Massachusetts law the entities are "bodies corporate" at least for limited purposes, it would seem that the California section applies and the use of substituted service would be proper.

But a more serious objection to substituted service [458] is relied on by defendants. Defendants contend that substituted service on the Secretary of State is restricted to causes of action that arise from doing intrastate business in California, citing *Dunn v. Cedar Rapids Engineering Co.* (1945) 152 F. (2) 733; *Minor v. United Airlines Transp. Corp.* (1936 D. C. So. Cal.), 16 F. Supp. 930; *Old Wayne Mutual Life Ins. Assn. v. McDonough*, 204 U. S. 8; *Simon v. Southern Ry.*, 236 U. S. 115 and *Perkins v. Benguet Consol. Mining Co.*, (1952) 342 U. S. 437.

Corporation Code, Sec. 6403 states, "A foreign corporation shall not transact intrastate business in the state until" it qualifies with the Secretary of State. This is a transitory action. The purported causes of action arose in Massachusetts, not in California. Our case does not come here on removal, but was originally filed in this court.

Although not spelled out by defendants, from their cases cited we evolve this contention: (1) That

since no filing existed with the Secretary of State, the attempts to use substituted service is made on the ground that defendants should have qualified with the Secretary of State. (2) That by Sec. 6403, et seq., Corporation Code, California is by law exacting a consent, express or implied, to acceptance of service. (3) That such consent, express (by qualifying) or implied (by failing to qualify), is a limited consent, conforming to the extent of the statute, i.e., for causes of action arising in intrastate business conducted by defendants in the State. (4) Therefore there is no implied consent concerning causes of action arising in Massachusetts.

We start with general principles. To subject a foreign corporation to process in California, (a) the corporation must be doing business in California, [see pt. II] and (b) there must be service on “an agent authorized by appointment or by [459] appointment or by law to receive service of process.” Rule 4(d)(3), Rule of Civil Procedure. [Emphasis added.]

Is there a further requirement that the cause of action arise in the state or district? We consider first the requirements of jurisdiction over the subject matter.

We must distinguish between actions commenced in the State court and removed to the Federal court, and actions commenced originally in the Federal court. On a removal case, although diversity of citizenship and jurisdictional amount must be present, another rule comes into play, that unless the State court had jurisdiction there is no jurisdiction

on removal to the Federal court. Cases originally brought in the Federal court, however, rest upon the Congressional grant of power to the District court, fixing its jurisdiction. *Barrow Steamship Co. v. Kane*, (1898) 170 U. S. 100. *Carmack v. Panama Coca-Cola Bottling Co.*, (1951, 5 Cir.) 190 F. (2) 382, 385.

Sec. 1332 (a) (1), Title 28, U.S.C.A., provides: "The District courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs and is between (1) Citizens of different States." 28 U.S.C.A. Sec. 1332 (a) (1).

Sec. 1391, Title 28, U.S.C.A. speaks of venue in diversity cases and provides in (a) that actions founded on diversity of citizenship may be brought only in the judicial district where all plaintiffs or all defendants reside. [See *Moss v. Atlantic Coast Line R. Co.*, (1945, 2 Cir.) 149 F. (2) 701, decided before revision of Title 28] and in (c) that a corporation may be sued in any district in which it is incorporated, licensed to do business, or is doing business. [460]

Sec. 1441 concerns removed actions. See *Polizzi v. Cowles Magazines*, (1953) 345 U. S. 663 as to both sections.

Thus, jurisdiction of the diversity cause is provided for by Sec. 1332, Title 28, U. S. C. A. and venue by Sec. 1391. Any U. S. District court has jurisdiction of a diversity case originally filed in that court. Venue is fixed by Sec. 1391 alone. It

will be noted that no other statutory limitation, such as "where the cause of action arose" appears in the statutes. It is axiomatic that with such venue provisions, there would be situations where there was venue and yet the cause of action might have arisen in a distant state, e.g. See: *Ezell v. Rust Engineering Co.* (D. C. So. Cal. 1948) 75 F. Supp. 980 pt. 6.

But in a removal case, the jurisdiction of the district court is limited by the jurisdiction that existed in the State court. *Cyc. of Fed. Procedure*, 3rd Edition, Sec. 3.11, p. 199; *Venner v. Michigan Central R.R. Co.*, (1926) 271 U. S. 127.

Dunn v. Cedar Rapids Engineering Co., 152 F. (2) 733, was a removed case and the inquiry was properly made as to whether or not there was jurisdiction in the California courts, when the cause of action arose elsewhere. However, *Minor v. United Airlines Transp. Co.*, (1936) [D. C. So. D. Cal.] 16 F. Supp. 930 relied on in *Dunn v. Cedar Rapids*, (*supra*) was apparently a case filed originally in the District court and would not therefore seem to support the decision in the *Dunn* case. On the question of jurisdiction over the person (considered hereinafter) both the *Dunn* and *Minor* cases would be in point.

Since the *Dunn* case, however, the California courts have held that they have jurisdiction of transitory actions against foreign corporations on causes of action arising outside the state of California. These California decisions consider the problem as one of jurisdiction over the subject [461]

matter and not a problem of jurisdiction over the person.

Koninklijke, L. M., v. Superior Court,
(1951) 107 C. A. (2) 495, 237 Pac. (2)
497, at 499:

“* * * The judicial trend is toward putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them. (Barrow SS Co. v. Kane, 170 U. S. 100, 106 [18 S. Ct. 526, 42 L. Ed. 964]; Denver & R.G.R. Co. v. Roller, 100 F. 738, 743 [41 C.C.A. 22, 49 L.R.A. 77].) The weight of modern authority is to the effect that the mere fact that the cause of action arose, or the transaction giving rise to it occurred beyond the territorial limits of the state of suit does not prevent effective service of process upon an actual agent of a foreign corporation. (See annotation in 30 A.L.R. p. 255 and cases cited at p. 258, et seq.) * * *”

And at 501:

“* * * Since this is a transitory action, the court has jurisdiction hereof and since petitioner is doing business in the state and amenable to process it is immaterial that the subject matter is wholly unrelated to any of the business conducted by the petitioner in this state
* * *”

Schultz v. Union Pacific RR Co.,
(1953) 118 A.C.A. 189, 118 C.A. (2).

See:

Winfield v. United Fruit Co.,
(1933 Cal. Sup. App.) 135 Cal. App. 791.

Thus, the basis of the Dunn case (considered as a holding on jurisdiction over the subject matter) is no longer present, since California courts have spoken on the subject. [462]

The other cases relied on by defendants are not decisive. Perkins v. Benguet Consol. Mining Co., (1952) 342 U. S. 437, likewise concerns jurisdiction of State courts. The court held that due process did not prohibit the State from taking jurisdiction over a foreign corporation and said that neither did it compel the state court to take jurisdiction; that the case should be remanded so that Ohio might say whether it based its decision on Federal or State law. In essence the court holds that Ohio is free to take or decline jurisdiction over the corporation. Simon v. Southern Railway, (1914) 236 U. S. 115, concerned a State action and arose by a bill in equity originally brought in the federal court to restrain the enforcement of a state judgment obtained on substituted service. But the Louisiana statute provided no notice to the state defendant (p. 117) and the defendant received no notice (p. 118) and service was not made on the Secretary of State as required, but on an assistant secretary (p. 118). The dictum (p. 130) that the power of a state to provide for substituted service on foreign corporations is limited to dealing with transactions within the state is certainly made a nullity by Perkins v. Benguet Consol. Mining Co. (*supra*).

Likewise, in *Old Wayne Life Assn. v. McDonough* (1907) 204 U. S. 8, on writ of error to the Supreme Court of Indiana, the problem concerned a judgment on substituted service obtained in the state courts of Pennsylvania. No notice was given by the Insurance Commissioner of Pennsylvania to the Pennsylvania defendant (p. 13). Conceding the case originally stood in part for the proposition that service was bad because defendant was transacting no business in Pennsylvania (p. 22) it would not be law now in view of *Perkins v. Benguet* [463] (supra); *Morris & Co. v. Skandinavia Ins. Co.*, (1929) 279 U. S. 405, often cited, is not decisive. It was a removed case. The court echoes the dictum and holding of *Simon and Old Wayne*, but the court held defendant was not doing business in the state prior to removal.

Turning now to cases originally filed in district courts we believe that *Barrow SS Co. v. Kane*, (1897) 170 U. S. 100 is still good law. "The jurisdiction (diversity) so conferred upon the national courts cannot be abridged or impaired by any statute of the State" (p. 111).

We next consider the requirements of jurisdiction over the person. Where in an action originally filed in the district court the service is made on an officer or agent of the foreign corporation within the jurisdiction or made on an agent actually appointed pursuant to the statutory requirements of a state, no problem is presented. In the case at Bar we have substituted service.

Rule 4 (d) (c) of the Rules of Civil Procedure provide for service upon a foreign corporation by delivery of process to an "agent authorized by appointment or by law to receive service of process * * *." Sec. 411 (2) Code of Civil Procedure, "if the suit is against a foreign corporation * * * doing business in this state, in the manner provided by Sec. 6500-6504, inclusive, of the Corporations Code."

Sec. 6500 Corporations Code designates certain agents or officers of the corporation upon where process can be served, including an agent appointed pursuant to statute.

Sec. 6501 provides in part as follows: "* * * or if no agent has been designated and if no one of the officers or agents of the corporation specified in Sec. 6500 can be found after diligent search," then service shall be made by [464] delivery to the Secretary of State or to an assistant or deputy secretary of State.

Thus, it would at first blush appear that under California statute, substituted service on the Secretary of State is valid only as to corporations engaged in intrastate commerce, i.e., that the implied consent goes only to intrastate business and is therefore a qualified consent to service on the Secretary of State. *Dunn v. Cedar Rapids Engineering Co.* (supra); *Minor v. United Airlines, etc.* (supra).

The California statute originally did not limit its sweep to only intrastate business. The amendment was made in 1929 and indicated a concern by California over burdening interstate commerce.

An analysis in the Stanford Law Review, "Suing Foreign Corporations in California," Vol. 5, p. 503 at 511 to 513, probably gives the answer and suggests, based upon the California cases cited therein, that a judicial repeal of this section has occurred, and that the present view of California courts is "where, exactly, interstate commerce ends and local commerce begins seems to be largely immaterial, whether the particular business of these corporations is denominated intrastate or interstate commerce, does not change the fact that they are still doing business in this State." *Fielding v. Superior Court*, 111 Cal. App. (2) 490; cert. den. 344 U. S. 897. California cases have not considered our particular problem. The *Dunn* and *Minor* cases stand alone. Accordingly, we conclude that under California law substituted service is available on the Secretary of State whether the corporation is doing business intrastate, interstate, or both.

We do not pause to burden this lengthy memorandum by quoting from the analysis made by the Stanford Law Review or by an analysis of the cases cited therein, nor do we [465] pause to consider whether the three defendants are engaged in intrastate or interstate business. The court holds that since this is a transitory action, and was originally filed in this court, the place where the cause of action arose has no bearing on the problem. The court is not without doubt, however, as to the use of substituted service on the Secretary of State, in view of the use of the words, "intrastate business"

in the California statute. The motion to quash service of process on the defendants is denied.

IV.

The motion to dismiss on the ground, (a) that the court lacks jurisdiction of the subject matter, and (b) on the further ground that each count fails to state a claim upon which relief can be granted.

(a)

Any question concerning the jurisdiction of the subject matter has been disposed of in earlier sections.

(b)

The failure to state a claim for which relief can be granted.

(1)

First Cause of Action

The first cause of action, in substance, alleges that the plaintiff had heretofore been a Christian Science Practitioner and had had his name listed in the official publications of the church; that he withdrew his name from the list, spent a year writing a book and then requested that his name be reinstated as a Christian Science Practitioner in the publications of the church. That defendants failed to reinstate his name. That no disciplinary proceedings were taken under Church law; that he has exhausted his remedies [466] within the church; that he has been damaged in the sum of \$100,000.

It is axiomatic that civil courts will not dictate

or interpret ecclesiastical doctrine, and that courts will not review decisions of church bodies or direct them to proceed in any particular manner. *Maxwell v. Brougher*, 99 Cal. App. 824.

Plaintiff has no property right in being listed as a Practitioner in the *Christian Science Journal*. It is likewise clear that the Publishing society, like any magazine or newspaper, may refuse to carry advertising or listings in its publications. *Reeda v. The Tribune Company*, 218 Ill. App. 45 (1920).

Obviously no claim for relief has been stated and the motion to dismiss on that ground is granted.

(2)

Second Cause of Action

The second cause of action incorporates the allegations of the first, but adds additional facts, to wit, that while plaintiff previously earned the sum of \$15,000 per year, since his year of study and the writing of the book he would now earn \$25,000 as a Christian Science Practitioner, and prays damages in the sum of \$25,000 per year. What has been stated as to the first cause of action applies equally to the second and the motion to dismiss for failure to state a claim for relief, is granted.

(3)

Third Cause of Action

The third cause of action incorporates the substance of the first and second, recites the research on, and publication of the book, "God on Main

Street," alleges a submission of the book to the defendants for examination and their [467] failure to reply; the publication of the book and the fact it was again transmitted to the defendants, then alleges that the defendants "conspired amongst themselves and each other to hinder, delay and deny circulation of the book among the members of the Christian Science faith, and among members of the public generally," and that "defendants have, and continue to by means of such conspiracy, hinder, delay and deny such circulation" and "have impugned and vilified to the members of the Christian Science faith and to the public generally the character, motives, ethical and professional standing of plaintiff in a manner calculated and intended to injure, diminish, harm and destroy the value and status of such book both as a property and a religious treaty * * *."

The third cause of action further alleges that the defendants were vendors, sellers and distributors of literature to its various branch churches, reading rooms thereof and various book stores and vendors of literature; alleges on information and belief that defendants informed and notified said branch churches, reading rooms and the independent book stores "that they should not thereafter exhibit, purchase, acquire, sell or distribute plaintiff's said book 'God on Main Street' and that said defendants informed or caused said churches, reading rooms and sellers of literature * * * that their purchase, sale or distribution of said book would cause the displeasure of defendants, and that de-

defendants would thereafter fail, refuse and neglect to subsequently furnish them with its literature * * *." That in furtherance of the conspiracy, defendants refused lawful advertising matter tendered to the Christian Science Monitor, concerning the book; and that the refusal of the defendants to insert plaintiff's name in the Christian Science Journal was in [468] furtherance of such conspiracy. Plaintiff prays damages in the sum of \$100,000 compensatory damages, and \$50,000 exemplary damages.

As to this cause of action, the court prefers to treat the motion to dismiss as a motion for summary judgment under Rule 12(b) and Rule 56 of the Rules of Civil Procedure for the reason that matters outside the pleadings, such as the Manual of the Mother Church in Boston have been considered by the Court. The court has heretofore indicated its intention to so proceed in this matter, and has given both parties an opportunity to present matters under Rule 56 [motion for summary judgment].

Treated thus as a motion for summary judgment, the court is of the view that the motion should be granted. The conspiracy is alleged in most general terms, and the gist of it is to charge that the defendants conspired to hinder the circulation of plaintiff's book and have "impugned and vilified the character motives, ethical and professional standards of the plaintiff in a manner calculated to injure and destroy the book." Boiled down, we

have therefore, a case where a member of a religious faith writes a book which does not find acceptance with the leaders of the particular religious order. It seems elemental that the First Amendment to the Constitution, in providing for the right of free speech and the right to worship as one pleases, would include the right of a religious order to condemn a book as heresy, to condemn its writer as a heretic, and to forbid its members to sell, buy or read the book. The court is only commenting on the right of a religious order to do these things, and not indicating approval or disapproval of such conduct. [469]

More specifically, the plaintiff alleges that the defendants have notified their own book stores and other book stores to which the defendants sell church literature, not to exhibit or sell plaintiff's book on pain of displeasure of the defendants and subsequent refusal of the defendants to thereafter sell such book stores church literature. Again, it would seem to be within the right of a religious order to determine what literature its own stores would sell and to also say to book stores in general, "If you sell heresy in your stores, we will withhold from you church literature." The court can well imagine the feelings of devout church members, on entering a book store and finding one of their approved religious works lying side by side with a book making a critical attack on that particular faith.

In his brief, but not in his complaint, the plain-

tiff attempts to bolster the third cause of action by contending his action is one for violation of the antitrust laws. At best this would concern plaintiff's allegation concerning its actions concerning independent book stores, and the making known of its displeasure if the plaintiff's book was sold. Is this the "kind of restraint of trade or commerce which the Act condemns?" All restraints on interstate commerce are not illegal. *Apex Hosiery Co. v. Leader*, (1939) 310 U. S. 469. Clearly there must be shown substantial impact on interstate commerce or an attempt to restrain commercial competition in some substantial way. Restraint upon commercial competition in the absence of price fixing is not illegal per se. Even organized baseball is not considered commerce under the statute, *Federal Baseball Club, etc., v. National League, etc.*, 259 U. S. 200. The court feels it would be a waste of time and unduly dignify the pleading filed [470] by the plaintiff to give further consideration to this point.

The motion for summary judgment on behalf of the defendants on the third cause of action is granted.

The court's doubt on the rulings on first three motions leads the court to the conclusion that these motions should be denied and the fourth motion to dismiss the first and second causes and to grant summary judgment on the third cause, about which the court has no doubt, should be granted. The entire record will be thus before the Circuit in the

event of an appeal and if the court is in error on the earlier motions, the matter can be remedied without a remand. If on the other hand, the court grants one of the preliminary motions, it has no authority to rule on the fourth motion, raising the question as to whether a claim for relief has been stated. *Howard v. Archer*, 115 F. (2) 342, where the Circuit held that "in the absence of jurisdiction it was error to adjudge that the complaint was [so] barred" by the statute of limitation.

Defendants will serve and file proposed judgment, including findings on the third cause of action, pursuant to the rules of this court.

Dated: October 27, 1953.

/s/ JAMES M. CARTER,

[Endorsed]: Filed October 30, 1953. [471]

In the District Court of the United States, Southern
District of California, Central Division

No. 13517—C

ALEXANDER SWAN, 2d,

Plaintiff,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON, MASSACHUSETTS, Also Known as THE CHURCH OF CHRIST (SCIENTIST), a Juridical Entity Recognized and Regarded as Such, and as a Body Corporate, Under the Laws of the Commonwealth of Massachusetts; THE CHRISTIAN SCIENCE BOARD OF DIRECTORS, a Juridical Entity, Recognized and Regarded as Such, and as a Body Corporate, Under the Laws of the Commonwealth of Massachusetts; THE CHRISTIAN SCIENCE PUBLISHING SOCIETY, a Juridical Entity, Recognized and Regarded as Such, and as a Body Corporate, Under the Laws of the Commonwealth of Massachusetts; DOE I TO X, DOE CORPORATIONS I, II, III and IV; DOE ASSOCIATION, a Non-Profit Association,

Defendants.

ORDERS RE MOTIONS TO DISMISS AND TO QUASH SERVICE OF PROCESS TOGETHER WITH FINDINGS OF FACT AND JUDGMENTS ON SECOND AMENDED COMPLAINT

The matter of the following motions to dismiss

second amended complaint and to quash substituted service of process upon the named parties defendant, together with the affidavits and exhibits thereto attached in support thereof and the counter-affidavits and attached exhibits and the reply affidavits and attached exhibits in [472] connection therewith, together with the written points and authorities and memorandum-brief in support of said motion and the opposing points and authorities and memorandum-brief first came on regularly to be heard June 29, 1953, in Court No. 3 of the above-entitled Court before the Honorable James M. Carter, Judge presiding, at which time said matters were continued for further briefing and argument on September 21, 1953, before said court, and further hearing on said matters was held before said court on October 26, 1953; The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated trusteeship or society; The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a self-perpetuating group of individual trustees for said religious trusteeship or society, and The Christian Science Publishing Society, an unincorporated trusteeship, appearing by Lindstrom and Bartlett through Ralph G. Lindstrom and Harris Robison to present said motions at said hearings, and Alexander Swan, 2d, appearing by Eugene L. Wolver, Esq., to oppose said motions at said hearings; evidence having been presented by such written affidavits and exhibits in support of and also in opposition to said motions, and written points and authori-

ties and memorandum-briefs both in support of and in opposition to said motions, and oral argument fully presented on said matters, and the Court, being fully advised in the premises and having prepared and filed its Memorandum Decision under date of October 30, 1953, now makes disposition of said matters as follows:

It Is Hereby Ordered and Adjudged:

1. That motion to dismiss the action as to each defendant on the ground that the court is without jurisdiction because of failure of plaintiff to show diversity of citizenship be and hereby is denied.

2. That motion to dismiss the action for lack of jurisdiction over the person of each said named party defendant on the grounds [473] (a) that none of them is a legal entity with capacity to be sued in California on the purported cause of action set forth in plaintiff's second amended complaint, and (b) that none of them is amenable to process within the State of California, viz., is not doing business in California, be and hereby is denied on each said grounds.

3. That motion to quash service of process upon said defendant on the ground that said process is insufficient and that the purported substituted service of process on the California Secretary of State is neither authorized nor valid in the type of action alleged in said second amended complaint be and hereby is denied.

4. That motion to dismiss the first and second

counts of said second amended complaint on the ground that the court lacks jurisdiction of the subject matter alleged therein be and hereby is denied, but said motion to dismiss said first and second counts on the ground that each fails to state a claim for which relief can be granted be and hereby is granted and each of said first and second counts be and hereby is dismissed with prejudice to the commencement of another action.

5. That motion to dismiss the third count of said second amended complaint on the ground that it fails to state a claim for which relief can be granted should be and is herein treated as a motion for summary judgment for the reason that matters outside the pleading (consisting of said affidavits and exhibits) have been considered by the court; that, in connection with treating said motion as a motion for summary judgment, the court makes and enters its Findings of Fact as follows:

(a) That defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, was organized and functions solely to foster, maintain, control, and promote the teaching, practice, and dissemination of the religion known as Christian Science, which is a religion predicated upon the Bible and founded and organized by Mary Baker Eddy. [474]

(b) That defendant, The Christian Science Board of Directors, is a self-perpetuating group of five individual trustees first created in the founding deed of trust executed by Mary Baker Eddy under

date of September 1, 1892; that said group constitutes the executive officers of The First Church of Christ, Scientist, in Boston, Massachusetts, and exclusively manage, determine the ecclesiastical polity, and direct all other affairs of said church according to its bylaws set forth in the Manual of The Mother Church, aforesaid, The First Church of Christ, Scientist, in Boston, Massachusetts.

(c) That defendant, The Christian Science Publishing Society, is the name of a publishing trusteeship created by deed of trust executed under date of January 25, 1898, by Mary Baker Eddy, and is operated by a group of three individual trustees as a wholly religious activity solely of and for said defendant church, and solely for the promotion and extension of the religion of Christian Science as taught by Mary Baker Eddy; that only said Publishing Society selects, approves, and publishes the books and literature it sends forth.

(d) That, on or about March 5, 1930, plaintiff applied for membership in the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and, on or about April 30, 1930, he was admitted as a member in good standing, and ever since said date plaintiff has been and now is a member of said Church; that, on or about September 15, 1934, plaintiff was approved and accepted by said defendant Church and its managing officers, the defendant The Christian Science Board of Directors, for listing and advertisement as a Christian Science practitioner in The Christian Science Jour-

nal; that, from and after said 15th day of September, 1934, until on or about October 17, 1949, plaintiff paid defendant The Christian Science Publishing Society its annual advertising fee and charge for [475] inserting and listing his name, address, and telephone number in the monthly editions of The Christian Science Journal under the classified caption of "Christian Science Practitioners and Teachers"; that, on or about September 12, 1949, plaintiff voluntarily requested removal of his name temporarily from said listing for the purpose of enabling him to pursue and engage in further study and research in the field of Christian Science and to do expository writing pertaining to metaphysics, all of which plaintiff pursued until on or about May 10, 1951; that, on or about said 10th day of May, 1951, plaintiff made written application for resumption of the publication and reinsertion of his name, address, and telephone number under said classified caption in said The Christian Science Journal, but that, ever since said date, defendants have failed and refused to resume said publication or reinsertion.

(e) That, during the said period commencing on or about October 17, 1949, and terminating on or about May 10, 1951, plaintiff wrote and caused to be published a book entitled "God on Main Street"; that plaintiff's said book, as described by plaintiff, is "an explanation and dissertation of, on and concerning the beliefs and teachings of Christian Science."

(f) That, on or about July 21, 1950, plaintiff completed the manuscript for said book and advised defendants thereof, and offered and tendered to said defendants a copy thereof, but that defendants refused, failed and neglected to receive, accept, or examine such manuscript, and did not communicate with or advise plaintiff concerning said book or the publication thereof.

(g) That, during the month of February, 1951, plaintiff caused said book to be published independently of defendants, and transmitted a published copy to defendants.

(h) That plaintiff has alleged, on information and belief, that “defendants * * * conspired * * * to hinder, delay and deny circulation of said book * * * amongst the member of the Christian [476] Science faith and among members of the public generally” and “have impugned (sic) and vilified (sic) * * * the character, motives, ethical and professional standing of plaintiff in a manner * * * intended to injure, diminish, harm and destroy the value and status of such book”; that plaintiff has further so alleged, on information and belief, that said defendants “notified * * * branch churches, reading rooms (and) book stores * * * (not to) * * * sell or distribute * * * said book” and that, if they did so, “defendants would thereafter * * * refuse * * * to subsequently furnish them with * * * literature * * * and books” published by defendant Publishing Society; that, for the purpose of this motion, such allegations must be treated as true.

(i) That it is true, as plaintiff alleges, that “the ‘Manual of The Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts, (by) Mary Baker Eddy,’ has been and now is the official Bylaws of said (named) defendants”; that said bylaws governing defendants provide that “only the (said) Publishing Society of (said) The Mother Church selects, approves, and publishes the books and literature it sends forth” and “the literature sold or exhibited in the Reading Rooms of Christian Science Churches shall consist only of * * * writings * * * by Mary Baker Eddy * * * (and) also the literature published or sold by The Christian Science Publishing Society”; that it is true, as plaintiff alleges, “that said reading rooms purchase all of their reading materials, of all types and descriptions, exclusively from said defendant, The Christian Science Publishing Society.”

(j) That also, under the ecclesiastical polity of said The Mother Church and under said bylaws governing defendants and all members of said The Mother Church, including plaintiff as a member thereof, and as set forth in said Manual, no member of said The Mother Church shall “buy, sell, nor circulate Christian Science literature which is not correct in its statement of the divine Principle and rules * * * of Christian Science”; and “a member of * * * (said) [477] Church shall not patronize a publishing house or bookstore that has for sale obnoxious books.”

(k) That defendants refused advertising matter

concerning said book tendered to The Christian Science Monitor, an international daily newspaper published by said Publishing Society.

(1) That said third count of second amended complaint presents no genuine issue as to any material fact between plaintiff and any of said defendants, and that each of said defendants is entitled to a judgment as a matter of law.

Therefore, It Is Hereby Ordered, Adjudged, and Decreed: That said motion to dismiss the third count of second amended complaint (on the ground that it fails to state a claim for which relief can be granted) treated as a motion for summary judgment be, and hereby is, granted as to each of said named defendants, and said third count of said second amended complaint be, and it hereby is, dismissed as to each of said named defendants with prejudice to the commencement of another action and that plaintiff take nothing as to said third count.

Dated: November 23, 1953.

/s/ JAMES M. CARTER,
United States District Judge.

Affidavit of service attached.

Lodged November 10, 1953.

[Endorsed]: Filed November 23, 1953.

Docketed and entered November 23, 1953. [478]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Edmund L. Smith, Clerk of the Above-Entitled Court, and to the Defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts; The Christian Science Board of Directors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and The Christian Science Publishing Society, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and to Lindstrom and Bartlett, their attorneys of record.

You and Each of You Will Please Take Notice, that the above-named plaintiff, Alexander Swan, 2d, does hereby appeal to the United [480] States Court of Appeals for the Ninth Circuit, from those judgments and orders entered against said plaintiff and in favor of the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist); The Christian Science Board of Directors, and The Christian Science Publishing Society, in the above-entitled cause on the 23rd day of Novem-

ber, 1953, the within appeal being as to that part thereof, wherein and whereby said defendants' motion to dismiss the first and second counts of plaintiff's Second Amended Complaint on the ground that each fails to state a claim for which relief can be granted, was granted, and from the dismissal with prejudice of said first and second counts of said Second Amended Complaint, and from the Summary Judgment in favor of said defendants and against plaintiff as to the third count of said Second Amended Complaint.

Dated this 3rd day of December, 1953.

/s/ EUGENE L. WOLVER,
Attorney for Plaintiff.

[Endorsed]: Filed December 3, 1953. [481]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON, ON APPEAL

(Rule 75(d), Rules of Civil Procedure.)

To Edmund L. Smith, Clerk of the Above-Entitled Court, and to the Defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts; The Christian Science Board of Di-

rectors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and The Christian Science Publishing Society, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and to Lindstrom and Bartlett, their attorneys of record.

Pursuant to Rule 75(d) of the Rules of Civil Procedure, Alexander Swan, 2d, as plaintiff and appellant, hereby designates [482] the points upon which he intends to rely upon the appeal, as follows:

(1) That the First Count of plaintiff's Second Amended Complaint states a claim upon which relief can be granted;

(2) That the Second Count of plaintiff's Second Amended Complaint states a claim upon which relief can be granted;

(3) That it was prejudicial error for the court to dismiss with prejudice, the First Count of plaintiff's Second Amended Complaint;

(4) That it was prejudicial error for the court to dismiss with prejudice, the Second Count of plaintiff's Second Amended Complaint;

(5) That the affidavits upon which the court granted summary judgment in favor of the defendants and against the plaintiff as to the Third Count of plaintiff's Second Amended Complaint, do not

comply with Rule 56 and particularly sub-paragraph (e) of Rules of Civil Procedure;

(6) That the facts as indicated upon the pleadings and upon the affidavits relied upon by the court in granting such summary judgment are insufficient to support the judgment and rulings of the court in granting summary judgment as to the Third Count of plaintiff's Second Amended Complaint; and

(7) That the court committed prejudicial error in granting the summary judgment in favor of the defendants and against plaintiff as to the Third Count of plaintiff's Second Amended Complaint.

Dated this 10th day of December, 1953.

/s/ EUGENE L. WOLVER,
Attorney for Plaintiff and
Appellant.

Affidavit of service attached.

[Endorsed]: Filed December 10, 1953. [483]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 492, inclusive, contain the original Findings of Fact and Order re Motion to Dismiss

Amended Complaint or in Lieu Thereof to Quash Service of Summons Thereon; Second Amended Complaint, Equitable Relief and Damages; Alias Summons on Second Amended Complaint with Return of Service; Affidavit of Alexander Swan, 2d, Pursuant to Rule 4(d)(7) Federal Rules of Civil Procedure, etc.; Order Pursuant to Rule 4(d)(7) Federal Rules of Civil Procedure, etc.; Notice of Motions to Dismiss Second Amended Complaint, or in lieu thereof to Quash Service of Process Thereupon; Separate Affidavits of Walter A. Dane, John H. Hoagland, Arthur W. Eckman, Clayton B. Craig, Alexander Swan, 2d; John H. Hoagland, Alfred Pittman and Roy Garrett Watson; Notice of Motion to Dismiss or in Lieu Thereof to Quash the Service of Summons with Affidavits of Leonard T. Carney and Kimmis Hendrick; Separate Affidavits of Gordon V. Comer, Elizabeth McArthur Thomson, Alexander Swan, 2d, and Supplement Thereto; George Wendell Adams, Arthur W. Eckman, Hazel A. Firth, Gordon V. Comer and Elizabeth McArthur Thomson; Memorandum Decision; Orders re Motions to Dismiss and to Quash Service of Process Together with Findings of Fact and Judgments on Second Amended Complaint; Notice of Appeal; Statement of Points to Be Relied Upon on Appeal; and Appellant's and Appellees' Designation of Record on Appeal which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and

certifying the foregoing record amount to \$8.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 8th day of January, A.D. 1954.

[Seal]

EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14,195. United States Court of Appeals for the Ninth Circuit. Alexander Swan, 2d, Appellant, vs. The First Church of Christ, Scientist, in Boston, Massachusetts, also known as the Church of Christ (Scientist), a corporation; The Christian Science Board of Directors, and the Christian Science Publishing Society, a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 9, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,195

ALEXANDER SWAN, 2d,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, IN BOSTON, MASSACHUSETTS,
etc., et al.,

Appellees.

STATEMENT OF POINTS TO BE RELIED
UPON, ON APPEAL

(Rule 17, Paragraph 6, of the Above-Entitled
Court's Rules)

To Paul P. O'Brien, Clerk of the Above-Entitled Court, and to Appellees, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts; The Christian Science Board of Directors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and The Christian Science Publishing Society, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws

of the Commonwealth of Massachusetts, and to Lindstrom and Bartlett, their attorneys of record.

Pursuant to Rule 17, Paragraph 6 of the Rules of this Honorable Court, Alexander Swan, 2d, as appellant, hereby designates the points upon which he intends to rely upon the appeal, as follows:

1. That the First Count of Appellant's Second Amended Complaint states a claim upon which relief can be granted;

2. That the Second Count of Appellant's Second Amended Complaint states a claim upon which relief can be granted;

3. That it was prejudicial error for the court to dismiss with prejudice, the First Count of Appellant's Second Amended Complaint;

4. That it was prejudicial error for the court to dismiss with prejudice, the Second Count of Appellant's Second Amended Complaint;

5. That the affidavits upon which the court granted summary judgment in favor of the appellees and against the appellant as to the Third Count of Appellant's Second Amended Complaint, do not comply with Rule 56, and particularly sub-paragraph (e) of Rules of Civil Procedure;

6. That the facts as indicated upon the pleadings and upon the affidavits relied upon by the court in granting such summary judgment, are insufficient to support the judgment and rulings of

the court in granting summary judgment as to the Third Count of Appellant's Second Amended Complaint;

7. That the court committed prejudicial error in granting the summary judgment in favor of the appellees and against appellant as to the Third Count of Appellant's Second Amended Complaint.

Dated this 11th day of January, 1954.

/s/ EUGENE L. WOLVER,
Attorney for Appellant.

[Endorsed]: Filed January 12, 1954.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed, by and between appellant and appellees, through their respective counsel, that (1) the "Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts," eighty-ninth edition, being Exhibit "A" annexed to the affidavit of Gordon V. Comer, consisting of pages 171 through 312 of the certified record filed herein; and (2) the "Catalogue of The Christian Science Publishing Society," May, 1953, edition, as annexed Exhibit "B" to the affidavit of John H. Hoagland, consisting of pages 108 through 132 of the certified record filed herein, shall not be printed as part of the record on appeal, but that, in lieu thereof, appellant

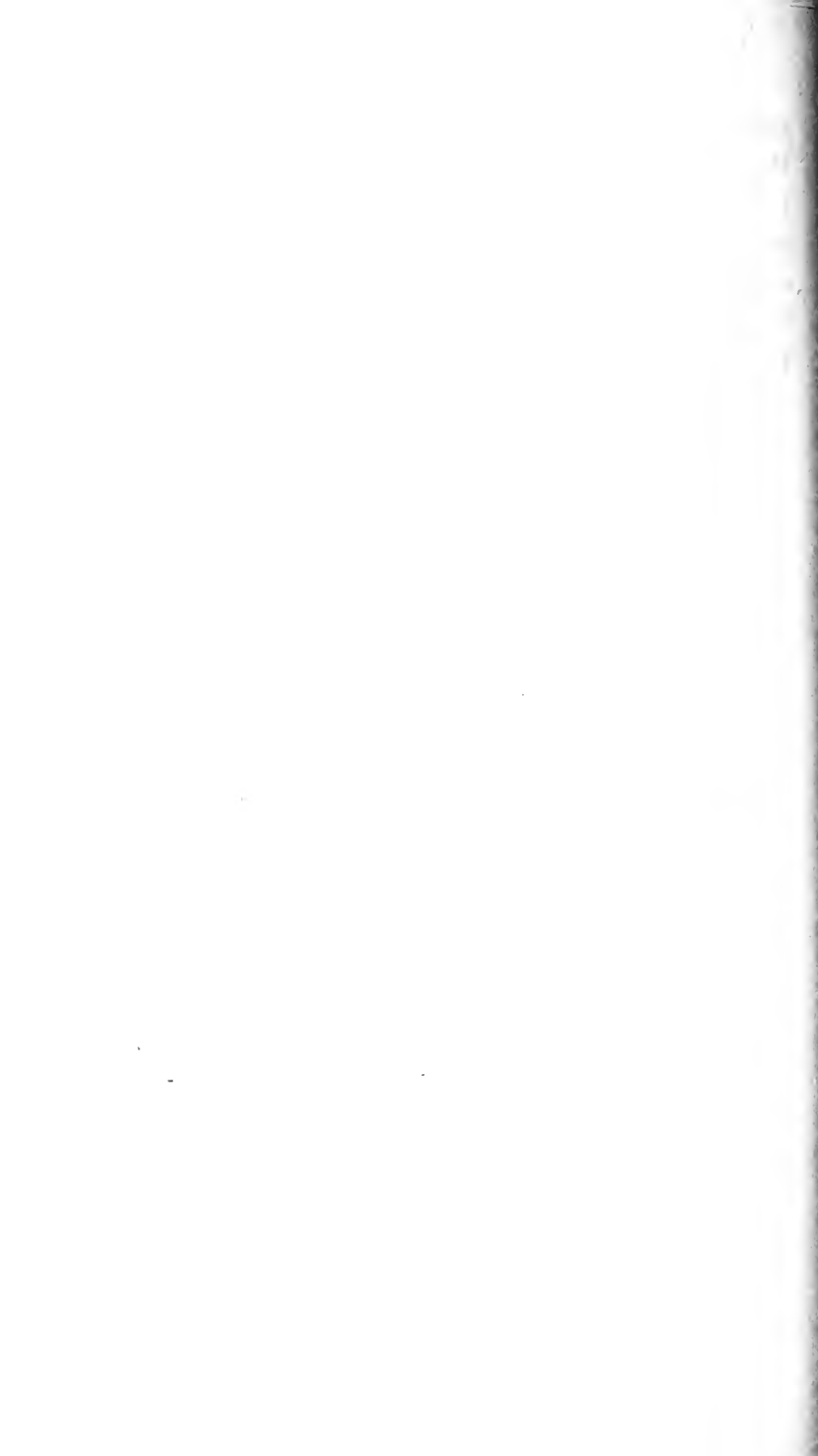
shall furnish to the clerk of the above-entitled court the required number of printed books described in (1) above, and appellees shall furnish to counsel for appellant and to the clerk of the above-entitled court the required number of printed books described in (2) above, and the same shall become a part of the record on appeal herein.

Dated: January 15, 1954.

/s/ EUGENE L. WOLVER,
Attorney for Appellant.

LINDSTROM and BARTLETT,
By /s/ HARRIS ROBISON,
Attorneys for Appellees.

[Endorsed]: Filed January 20, 1954.



No. 14195.

IN THE

United States Court of Appeals
FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2d,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, also known as the Church of Christ
(Scientist), a Corporation; THE CHRISTIAN SCIENCE
BOARD OF DIRECTORS, and the CHRISTIAN SCIENCE
PUBLISHING SOCIETY, a corporation,

Appellees.

APPELLANT'S OPENING BRIEF.

EUGENE L. WOLVER,
437 South Hill Street,
Los Angeles 13, California,
Attorney for Appellant.

FILED

APR 21 1954

PAUL P. O'BRIEN
CLERK



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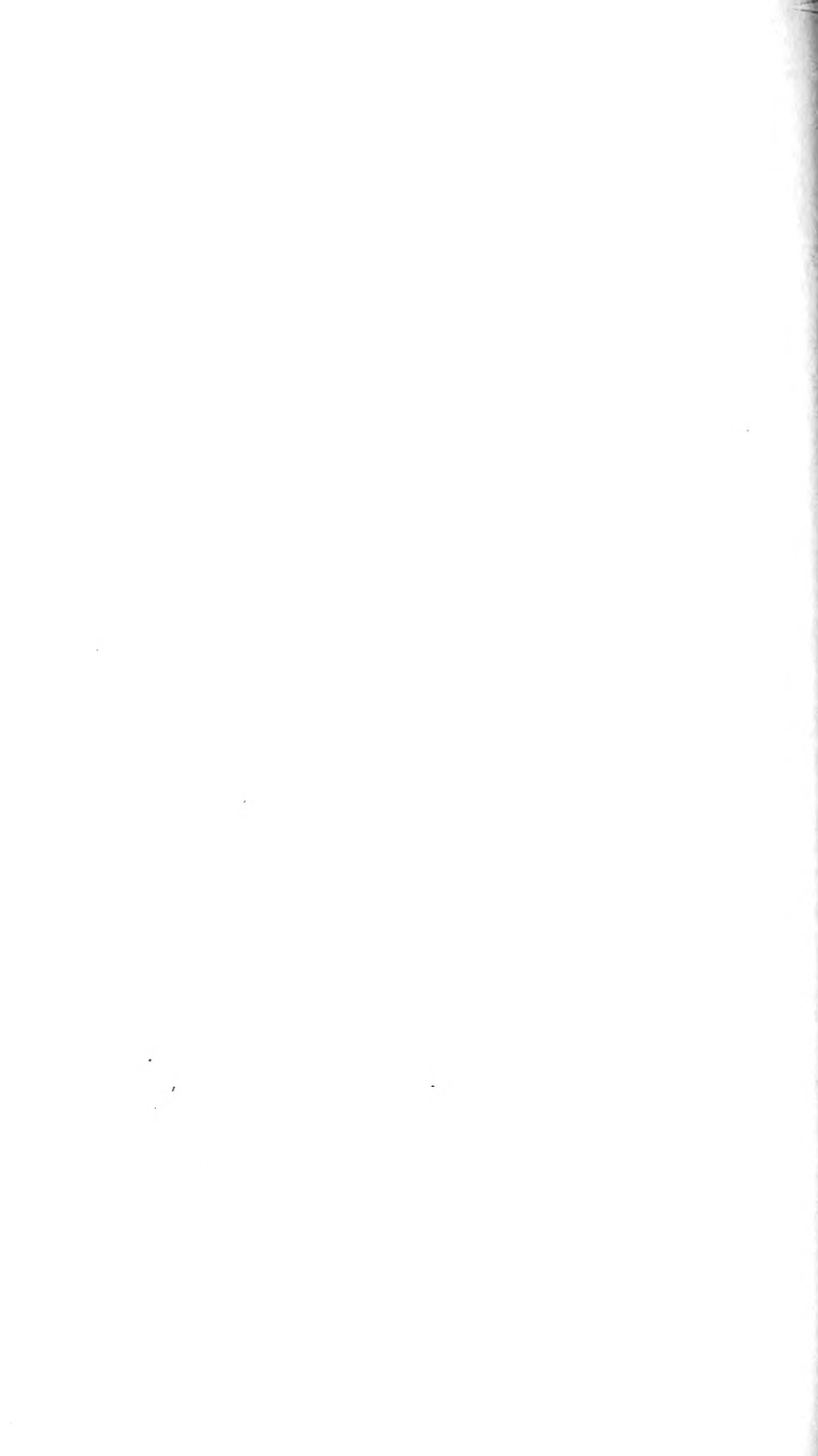
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No. 14195.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2d,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, also known as the Church of Christ
(Scientist), a Corporation; THE CHRISTIAN SCIENCE
BOARD OF DIRECTORS, and the CHRISTIAN SCIENCE
PUBLISHING SOCIETY, a corporation,

Appellees.

APPELLANT'S OPENING BRIEF.

The within appeal is from the order of the trial court dismissing with prejudice, the first two causes of action of Appellant's Second Amended Complaint and rendering Summary Judgment in favor of the Appellees as to the third cause of action of such Second Amended Complaint.

Statement of Pleadings and Facts as to Jurisdiction.

(a) *Preliminary Statement:* Subsequent to the granting, by the court, of a "Motion to Dismiss (and) . . . to Quash Service of Summons," on plaintiff's (First) Amended Complaint on the theory that certain corporate

defendants, had voluntarily (though not legally) discontinued their corporate existence and therefore could not be “engaged in business in California” [p. 3], the plaintiff filed his Second Amended Complaint, containing three causes of action [p. 8].

In such Second Amended Complaint, said defendants were each described as “a Juridical Entity, Recognized and Regarded as such, and as a Body Corporate, under the Laws of the Commonwealth of Massachusetts” [p. 81].

Said defendants, (1) The First Church of Christ, Scientist in Boston, Massachusetts, (2) The Christian Science Board of Directors, and (3) The Christian Science Publishing Society, filed “. . . Motions to Dismiss Second Amended Complaint, or in lieu thereof Quash Service of Process Thereon” [p. 36].

Pursuant thereto, four motions were presented and submitted to the trial court for decision.

As set forth in the “Memorandum Decision” of such trial court [p. 80] said four motions were:

(1) To dismiss the action as to each defendant on the ground the court is without jurisdiction because of failure of the plaintiff to show diversity of citizenship;

(2) To dismiss the action for lack of jurisdiction over the person of each defendant, (a) on the ground that none of defendants are legal entities with capacity to be sued in California on the purported causes of action set forth in plaintiff’s complaint; and (b) on the further ground that none of the defendants

is amenable to process within the State of California, viz., is not doing business in California;

(3) To quash service of process upon the defendants on the ground that said process is insufficient and that the purported substituted service of process (on the California Secretary of State) is neither authorized nor valid in the type of action here presented;

(4) To dismiss the second amended complaint and each count thereof against the parties defendant, on the ground (a) that the court lacks jurisdiction over the subject matter alleged in each of the said counts, and (b) on the further ground that each count fails to state a claim upon which relief can be granted.

The first three of such motions and subparagraph (a) of the fourth motion, were decided adversely to the said defendants [pp. 81-96], and by formal Order of Court, were each denied [p. 105]. No appeal therefrom has been taken, and such motions or the order of the court thereon, will not be hereinafter considered.

The fourth motion, predicated allegedly lack of jurisdiction over the subject matter and insufficiency of the statement of a claim was denied by the court on the ground of lack of jurisdiction, but was granted as to the first and second causes of action of the Second Amended Complaint on the ground "that each fails to state a claim for which relief can be granted," and a Summary Judgment, in favor of the defendants, was granted, as to the Third Cause of Action of such complaint [pp. 96-102].

The within appeal was taken solely by plaintiff, as appellant herein, from the formal written order of the trial court,

“wherein and whereby said defendants’ motion to dismiss the first and second counts of plaintiff’s Second Amended Complaint on the ground that each fails to state a claim for which relief can be granted, was granted, and from the dismissal with prejudice of said first and second counts of said Second Amended Complaint, and from the Summary Judgment in favor of said defendants and against plaintiff as to the third count of said Second Amended Complaint.” [P. 113.]

(b) *Jurisdiction of the District Court*: Each of the three causes of action contained in the Second Amended Complaint, seeks equitable relief and in addition thereto, each of said causes of action seeks damages. The amount of damage so sought in each cause of action exceeds \$3,000.00. It is alleged in the first cause of action, in paragraph I, that the plaintiff is a resident of the State of California and that the individual defendants are residents of the State (Commonwealth) of Massachusetts [p. 9]. It is alleged in paragraphs III that the defendant, The First Church of Christ, Scientist, is a “juridical entity duly organized, existing and recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts” [p. 9]. The same allegation is made in paragraph IV as to the defendant, The Christian Science Publishing Society, and the same allegation is repeated in paragraph V as to the Christian Science Board of Directors [p. 10]. These paragraphs are realleged in paragraph I of the second cause of action [p. 25] and in paragraph I of the third cause of action

[p. 27]. In the first cause of action, the damage suffered is alleged, in paragraph XXVI, as \$100,000.00 [p. 25]; in the second cause of action, the same is alleged, in paragraph XV, in the annual sum of \$15,000.00 [p. 26] and in the third cause of action, the same is alleged in paragraphs XI and XII, as \$150,000.00 [pp. 32-33].

It is respectfully submitted that jurisdiction herein was therefore in the District Court, pursuant to 28 United States Code Annotated, Section 1332, which provides as follows:

“DIVERSITY OF CITIZENSHIP; *amount in controversy*:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$3,000 exclusive of interest and costs, and is between:

(1) Citizens of different states . . .”

In each cause of action, the matter in controversy exceeds \$3,000.00, damages having been heretofore adjudicated to be a matter in controversy.¹

The equitable jurisdiction of the court is invoked by reason of the amount of damages to be assessed.²

The diversity of the citizenship causing the same to be between “citizens of different states” is predicated upon plaintiff being a citizen of California and the three answering defendants being each respectively, “a juridical entity

¹*Hobert v. Chase*, 12 Fed. Rules Dec. 171; *Peyton v. Desmond*, 127 Fed. 1; *Rundle v. Delaware, etc., Canal Co.*, 14 Haw. 80, 14 L. Ed. 335.

²*Loew's Inc. v. Cross Bay Amusement Co.*, 59 N. Y. S. 2d 764; *Adam Schuman Assoc. Inc. v. City of N. Y.*, 40 F. 2d 216.

recognized as such and as a body corporate under the laws of the Commonwealth of Massachusetts.” It has long been established law that said term, “citizen” includes a corporation.³ The citizenship of a corporation, for the purpose of jurisdiction of Federal Courts, is in state of its creation.⁴ The same rule has been applied to juridical entities which, for the purpose of Federal jurisdiction, are considered corporations, designated under the laws of the state of their origin and recognition.⁵

The third cause of action, which is predicated upon a restraint of trade, invokes the jurisdiction of the Federal Court, pursuant to Title 15, United States Code Annotated, Section 15, which provides as follows:

“SUITS BY PERSONS INJURED; *amount of recovery*:

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee.”

³*Barrow Steamship Co. v. Cane*, 170 U. S. 100, 42 L. Ed. 964; *Chicago etc. Railway Co. v. Stephens*, 218 Fed. 535.

⁴*Thomas v. South Butte Mining Co.*, 235 Fed. 968; *Peterborough Railway Co. v. Boston Railway Co.*, 239 Fed. 97; *Rojas-Adams Corporation of Delaware v. Young*, 13 F. 2d 988.

⁵*Puerto Rico v. Russell & Co.*, 288 U. S. 476, 482, 77 L. Ed. 903.

(c) *Jurisdiction of the Court of Appeals:*

The jurisdiction to hear and determine the within appeal, by this Honorable Court, is predicated upon the established law, that the Judgments of Dismissal, are "final decisions"⁶ and the Summary Judgment, is also a "final decision."⁷ Such legally established facts, make applicable 28 *United States Code Annotated*, Section 1291, which provides as follows:

"FINAL DECISIONS OF DISTRICT COURTS:

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

Section 1294 of said code, provides that venue is in this Honorable Court, providing:

"CIRCUITS IN WHICH DECISIONS REVIEWABLE:

Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeal as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district; . . ."

⁶*Wright v. Gibson*, 128 F. 2d 865; *Sosa v. Royal Bank of Canada*, 134 F. 2d 955; *Safeway Stores v. Coe*, 136 F. 2d 771; *Kelley v. Delaware River Joint Commission*, 187 F. 2d 93.

⁷*Lamb v. Shasta Oil Co.*, 149 F. 2d 729; *Pioche Mines etc. v. Fidelity etc. Trust Co.*, 191 F. 2d 399.

Statement of Case and Issues.

The basic case herein concerns appellant, a metaphysical healer, who was trained, accepted, approved, authorized and registered by the appellee church and placed upon its official professional register, published for said church by the appellee publishing company. This reference registry was for the public information of those who desired the professional services of persons, following the same profession and calling, as appellant. He caused his name to be withdrawn therefrom for a sabbatical period, at the conclusion of which he sought to have his name reinserted in such professional reference registry, as was the common and usual practice of the appellees and the registrees and listees therein. Without cause or provocation or the filing of any charges justifying such conduct, the appellees, despite their practice of long standing, refused to reinsert his name in said professional reference registry.

In his first cause of action, appellant sought to compel the reinsertion of his name in said professional reference registry, indicating his acceptance, approval and qualification as a practitioner of the appellee church and for damages for said refusal. In the second cause of action, appellant seeks damages for the loss of his income, of which he was deprived.

In addition to the foregoing, the appellees refused to carry any advertisement of a book written by appellant during said sabbatical period and refused to sell or otherwise trade or deal with book sellers or stores handling such book. For such conduct, appellant sought damages in his third cause of action.

The court's order and judgments of dismissal as to the first two causes of action raises the queries and ques-

tions of law: (1) Does the first count of appellant's second amended complaint state a claim upon which relief can be granted, and was it prejudicial error for the court to dismiss, with prejudice, the same? and (2) Does the second count of appellant's second amended complaint state a claim upon which relief can be granted, and was it prejudicial error for the court to dismiss, with prejudice, the same?

The summary judgment, raises the query and question of law! (3) Is the court's summary judgment, as to the third count of appellant's second amended complaint, supported by the pleadings and affidavits, and was it prejudicial error for the court to grant summary judgment as to said count?

Specification of Errors.

It is the contention of appellant that the trial court committed error by considering and granting a summary judgment as to the third count of said complaint predicated upon affidavits, which did not comply with Rule 56, subparagraph (e) of the Rules of Civil Procedure. Said rules dealing with summary judgment, requires that all such affidavits "show affirmatively that the affiant is competent to testify to the matters stated therein." The following affidavits do not comply with said rule in that they do not contain such affirmative showing:

Affidavit of Walter A. Dane [p. 40];

Affidavit of John H. Hoagland [p. 46];

Affidavit of Clayton B. Craig [p. 53];

Affidavit of Alfred Pittman [p. 71];

Affidavit of Gordon V. Comer [p. 75].

ARGUMENT.

I.

That the First Count of Appellant's Second Amended Complaint States a Claim Upon Which Relief Can Be Granted and That It Was Prejudicial Error for the Court to Dismiss With Prejudice, Such Count.

(a) *Statement of Claim:* By reason of the court's dismissal as insufficient to state a claim, as a matter of pleading, appellant respectfully invites the Court's attention to his first cause of action of his Second Amended Complaint wherein the same is plead [p. 8].

After alleging the diversity of citizenship and residence of appellant and appellees, in the first five paragraphs [pp. 9-10], appellant alleges in the sixth paragraph, the control of the other appellees by the appellee, the Christian Science Board of Directors [p. 10] and the control of the maintenance, teaching and practicing of Christian Science by the appellee, The First Church Of Christ, Scientist, In Boston, Massachusetts [par. VII, p. 10]; the function as to religious and secular printed matter by the Appellee, the Christian Science Publishing Society [par. VIII, p. 11], including the monthly printing of the Christian Science Journal containing the only list of registered, authorized and approved Christian Science Practitioners [par. IX, p. 12]; the prescription of the procedure to become an approved, authorized and registered Christian Science Practitioner [par. X, p. 13], and the pursuit of such procedure by appellant and his qualifications and acceptance, as a Christian Science Practitioner [par. XI, p. 14]; that only the names of approved and authorized Christian Science Practitioners were accepted for publication in the

Christian Science Journal [par. XII, p. 14]; the establishment by church law of procedures for discipline or expulsion [par. XIII, p. 15]; the chronology of appellant's application and acceptance of membership [par. XIV, p. 16]; his pursuit, completion and conclusion of the prescribed curriculum as a Christian Science Practitioner; his presentation of certification thereof, together with other matters required and his approval and acceptance as a Christian Science Practitioner on September 15, 1934 and the publication of his name indicating such approval and acceptance in the Christian Science Journal thereafter until October 17, 1949 [par. XV, p. 17]; his pursuit of such profession and his maintenance of his professional standing and practice [par. XVI, p. 18]; his voluntary request for the temporary removal of his name from such listing on September 12, 1949 [par. XVII, p. 19]; the completion of his sabbatical purposes and his written application for resumption and reinsertion in said professional reference registry on May 10, 1951 [par. XVIII, p. 19], and the continued refusal of the appellees to resume or reinsert appellant's name after said 10th day of May, 1951, without cause or provocation, or the bringing of any charges, accusations or other form of church indictment against him and his inability to pursue or continue his profession as a Christian Science Practitioner by reason thereof [par. XIX, p. 20]; resulting in his being deprived of his usual methods and means of livelihood and income and jeopardizing his reputation and prestige [par. XX, p. 21]; that appellant has exhausted all means available to him under church procedure for the restoration, resumption and reinsertion of his name, and he has performed all acts required of him by the appellees and that he is without a speedy, or adequate remedy at law [par. XXI, p. 21];

the established practice heretofore of reinserting upon application, the names of Christian Science Practitioners who voluntarily caused their names to be removed from the Christian Science Journal [par. XXII, p. 22], the necessity of such publication of a name in said Journal in order to be recognized as a Christian Science Practitioner by governmental agencies, public institutions, schools, hospitals or welfare organization or by branch churches of appellees [par. XXIII, p. 23]; the inability, by reason of the non-publication of his name, of appellant to obtain the services or assistance of a Christian Science Nurse, the maintaining of patients in a Christian Science institution, the sharing of offices with a Christian Science Practitioner whose name is published in said Journal and the non-recognition by persons desiring to ascertain his qualifications as a Christian Science Practitioner, by reason of such non-publication [par. XXV, p. 24]; that his damages are continuing, not readily ascertainable or sufficient so, to be compensatory [par. XXV, p. 24], and a prayer for damages in the sum of \$100,000.00 [par. XXVI, p. 25].

(b) *Relief can be granted upon Claim:* Basically, such pleadings indicate a status or right on the part of the appellant to practice the professional calling of a Christian Science Practitioner. That although procedure therefore exists, he has not been deprived of such right by any church action. That one of the rights thereof is a continuation of his initial acceptance and recognition by the church as a practitioner, by the monthly republication of his name under the professional reference registry for public information, of the names of church approved, authorized and registered Christian Science Practitioners.

That he voluntarily withdrew his name for a matter of months of such listing, was not to appellant's detriment by reason of the established policy and custom of reinserting the same upon request. It is respectfully submitted by reason of the failure of the appellees to either justify their refusal to reinsert appellant's name by the bringing of church procedures or their failure to adhere to the custom of reinserting the same upon request, entitled appellant to judicial relief and damages sought in his first cause of action.

California, unlike most of her sister states, does not follow the policy that matters of the church are ecclesiastical and not subject to civil law suits. The within matter arose, occurred and transpired in California and therefore, the law of California governs the rights and damages of the parties. The law of said state is determinative whether or not the conduct of appellees is tortious.

Erie Railroad v. Tompkins (1937), 304 U. S. 64, 82 L. Ed. 188.

Although the courts of California have refused to interfere in ecclesiastical practices, they have always been ready, willing and available to protect the civil and property rights of church members, even though the same may involve ecclesiastical matters.

For the purposes hereof, by reason of the same being an appeal from an Order of Dismissal, it is respectfully submitted that the allegations of the complaint must be accepted and considered as statements of fact. It has been said of an appeal from a Judgment of Dismissal, that the Court of Appeals is required to regard all of the allega-

tions of the complaint as though they had been established by evidence.

Holder v. St. Louis—San Francisco Ry. Co.
(1949), 172 F. 2d 217, 218.

Such allegations indicate that the appellant had been educationally and morally qualified to practice the calling of a Christian Science Practitioner. Such calling is essentially and basically the pursuit of a profession.

72 C. J. S. 1215, 1216.

As stated in the case of *Cavassa v. Off* (1929), 206 Cal. 307, 274 Pac. 573, at page 314:

“The right of a person to practice the profession for which he has prepared himself is property of the very highest character (*Hewitt v. Board of Medical Examiners*, 148 Cal. 590 (113 Am. St. Rep. 315, 7 Ann. Cas. 750, 3 L. R. A. (N. S.) 896, 84 Pac. 39)). Due to the severe and exacting tests, now generally required before a person can legally follow a profession at the present day, this right can only be acquired after years of arduous effort and closest application. It is generally the only means of the holder thereof whereby he may support himself and family and it usually affords such holder the best opportunity to become a useful and sustaining member of the community in which he resides. This right should not be taken from one who has thus acquired it, except upon clear proof that he has forfeited the same,”

The basic principle that the right to follow a profession is a property right, is recognized in the case of *Franklin v. Franklin* (1945), 67 Cal. App. 2d 717, 725, 155 Pac. 637.

. Appellant has not been deprived of his right to practice his profession through any church procedure, nor through any other legal means. The sole means used was the failure to reinsert his name, in successive monthly publications of a professional list published and printed monthly as an indication of those who are authorized, registered and approved to follow such profession. Thus indirectly, he has been deprived of his right and status as a recognized and approved Christian Science Practitioner and his right and ability to follow such calling for the purpose of supporting himself and dependents. It is respectfully submitted that both civil and property rights are therefore involved and the protection thereof has found recognition in the laws of the State of California.

In the early case of *Hooper v. Stone* (1921), 54 Cal. App. 668, 202 Pac. 485, the court dealt with a controversy between factions of the appellees herein. There existed at the State University, an unincorporated association, teaching Christian Science. Certain members thereof were dissatisfied with periodicals issued and sold by the appellee, Christian Science Publishing Society. Said members caused their new group to be incorporated, including in the name thereof, the designation of the former organization. The plaintiffs asserted a property right in the name and sued the new corporation and incorporators to enjoin their use thereof. The defendants' demurrer was overruled and judgment was adverse to them and they appealed. The court held at page 673 of the California citation:

“Nor do we see any merit in the remaining objection of the ecclesiastical courts. It is admitted that there is no tribunal within the Christian Science

denomination to which an appeal could be taken, the manual of the mother church providing for local self-government.”

The recent case of *Providence Baptist Church v. Superior Court* (1952), 40 Cal. 2d 55, 251 P. 2d 10, pertains to the right of a pastor to his position and to receive the emoluments therefrom. At page 60 of the California citation, the court held:

“We come, therefore, to the merits of the jurisdictional question. As long as civil or property rights are involved, the courts will entertain jurisdiction of controversies in religious bodies although some ecclesiastical matters are incidentally involved. *Rosicrucian Fellowship v. Rosicrucian Church*, 39 Cal. (2d), 245 P. (2d) 481. That there are civil and property rights present is apparent from the findings and judgment. The real property of the organization and funds collected are involved. Necessarily involved in the determination of who shall be pastor is the question of who shall receive the emoluments of the office, which presents a problem involving civil and property right.”

The court thereafter concludes at page 64:

“ . . . *No church tribunal has properly and finally acted. We are holding that the court may determine whether the rules of the society have been followed and if they have not what will be the resulting effect on civil and property rights.*” (Emphasis ours.)

A Writ of Prohibition to prevent proceeding with a cause of action involving such matters, was denied by the Supreme Court of California.

The leading case on this subject in California appears to be the case of *Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church* (1952), 39 Cal. 2d 121, 245 P. 2d 481. The decision gives the historical background of this movement and the controversy between varied adherents thereto, as to the use of certain property. Said court establishes the principle on page 131 of the California citation:

“The general rule that courts will not interfere in religious societies with reference to their ecclesiastical practices stems from the separation of the church and state, but has always been qualified by the rule that civil and property rights would be adjudicated. (See *Watson v. Jones*, 13 Wall. (U. S.) 679 (20 L. Ed. 666); *Church of Christ of Long Beach v. Harper*, 83 Cal. App. 41 (256 P. 476); *Dyer v. Superior Court*, 94 Cal. App. 260 (271 P. 113).) . . .”

Thereafter, the court at length, discusses and sets forth the distinction between matters ecclesiastical and civil and property rights.

Following the last cited two cases and predicated thereon, is the recent case of *Keeler v. Schulte* (1953), 119 Cal. App. 2d 132, 259 P. 2d 37. This also dealt with a theosophical society, wherein the membership had separated and the two factions each sought to control the property of the organization. There the court held at page 136:

“It is fundamental that under the provisions of the Constitution of the United States (Amendment No. 14) no one shall be deprived of property ‘without due process of law.’ This provision has been held applicable to the property of a lodge ordered forfeited in the event of a suspension, revocation, or surrender

of a charter. (Supreme Lodge of the World v. Los Angeles Lodge No. 386, *supra*; Ellis v. American Federation of Labor, 48 Cal. App. (2d) 440 (120 P. 2d 79); Gallagher v. American Legion, 154 Misc. 281 (277 N. Y. S. 81).)

In Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church, *supra*, it is said (quoting from the syllabus):

‘In a controversy between religious societies as to use of property and exercise of other rights, it is necessary to ascertain from the acts, dealings and usages of the parties where the various rights rest to determine the ownership of civil and property rights, even though some so-called ecclesiastical functions are so interwoven with civil and property rights that any decision involving the latter must necessarily affect the former . . .’

A sufficient property interest is involved which would entitle the courts to assume jurisdiction (Providence Baptist Church of San Francisco v. Superior Court, 40 Cal. 2d 55 (251 P. 2d 10).)”

The equitable relief of courts has been granted in cases of dismissal or expulsion without church authority or procedure (76 C. J. S. 809, 893, Religious Society, Secs. 48, 104). That equitable relief is available against a church organization is indicated in the case of *Giffen v. Christ's Church* (1920), 48 Cal. App. 151, 191 Pac. 718, where the court held at page 154:

“It is doubtless the law that when a religious corporation neglects or refuses to carry out its contractual obligations by failing or refusing to do or perform certain acts which lie within its power to perform, an action for specific performance against

it may be successfully invoked. (Bowen *et al.* v. Trustees of the Irish Presbyterian Church etc., 6 Bosw. (N. Y.) 245; Congregation Beth Elohim v. Central Presbyterian Church, 10 Abb. Pr. (N. S.) 485; 34 Cyc. 1162; In the Matter of the Reformed Dutch Church, 16 Barb. (N. Y.) 237), . . .”

In California, injunctive relief has been authorized in a case involving a theosophical society.

Law v. Crist (1940), 41 Cal. App. 2d 862, 865, 107 P. 2d 953.

It has also been held that mandamus may be applied to functions concerning churchmen. It being held in *Assembla Christina v. Zanpelli* (1932), 119 Cal. App. 515, 6 P. 2d 974, at page 516:

“Hence, mandamus will lie to compel the delivery of the church books, records and papers by outgoing officers to their successors, and the rule has been so enforced in similar cases in other jurisdictions. (State v. Biedy, 50 La Ann. 258 (23 South 327); Proprietors of St. Luke’s Church v. Slack, 7 Cush. (Mass.) 226.)”

Basically the within controversy arose by reason of the unprovoked and unjustified refusal of the appellees to abide by their moral and legal obligation to indicate appellant’s qualification, approval and acceptance as a Christian Science Practitioner, by reinserting his name in the professional list maintained by them for such purpose.

It is respectfully submitted that the rights of the litigants are determined by the law of the State of California and that under such law, appellant’s action, as plead in the first cause of action in his second amended complaint, con-

cerns itself with civil and property rights, of which he has been deprived without due process and that he is therefore entitled both to the equitable relief of the court and damages.

(c) *It is prejudicial error to dismiss with prejudice, said claim:* The order and judgment of the court dismisses the first cause of action with prejudice, and therefore precludes any further litigation of such claim [pp. 106 and 111]. It is respectfully submitted that the specific order of the court herein, is erroneous and therefore prejudicial to the rights of the appellant, since it precludes him from asserting legal rights and seeking legal damages to which he is entitled.

It is respectfully submitted that appellant was legally entitled to have the trial court hear the claims set forth in the first cause of action of his Second Amended Complaint and that if the allegations of said cause of action were proved, he would be entitled to judgment thereon since, as set forth in the legal authorities hereinbefore contained, according to the acts, deals and usages of the parties, he was entitled to have his name reinserted and republished as an approved, authorized and registered Christian Science Practitioner; a right which he was never deprived of by any church or legal procedure.

II.

That the Second Count of Appellant's Second Amended Complaint States a Claim Upon Which Relief Can Be Granted and That It Was Prejudicial Error for the Court to Dismiss With Prejudice, Such Count.

(a) *Statement of Claim:* Paragraph I of the second cause of action realleges the first twenty-five paragraphs of the first cause of action, omitting only paragraph XXVI, which contained the allegation of damages in the first cause of action [p. 25]. Thereafter, said cause of action alleges the maintenance of appellant of offices as a Christian Science Practitioner and the establishment of a clientele [par. II, p. 25]; collateral study and work by which he made himself more proficient in his calling [par. III, p. 26]; the realization of an annual income of \$15,000.00 and the allegation that the same would have been increased to an annual sum of \$25,000.00 and his damage and loss in said sum for the period that he was unable to follow said profession and calling [par. IV, p. 26]. The basic difference between the first and second causes of action is that the former dealt with appellant's status, reputation and position as a Christian Science Practitioner and a Christian Scientist, and the damages resulted in the loss thereof, while the second cause of action specifically deals with the damages occasioned by the loss of appellant's ability to pursue his profession and calling as a Christian Science Practitioner.

(b) *Relief can be granted upon claim:* Since the same basic facts are involved in the second cause of action, the

law applicable to which the court's attention has been hereinbefore invited in the argument as to the first cause of action, is equally applicable. Herein, without cause, justification or the attempted adherence to church procedure, appellant was effectively precluded from the following of his profession or calling. Under the laws of the State of California, wherein all acts occurred, such conduct was tortious. It is respectfully submitted that appellant is entitled to the damages which he suffered by reason of such tortious conduct.

75 C. J. S. 781, Religious Societies, Sec. 31c.

Such is the law of California wherein in the case of *O'Moore v. Driscoll* (1933), 135 Cal. App. 770, 128 P. 2d 438, concerns itself with torts committed by a church under a claim of discipline. Concerning the suggestion that a church is exonerated by reason of its purposes, the court held at page 774 of the California citation:

“ . . . Matter of discipline, also tortious, might give rise to a cause of action where alleged facts showed that it was within the scope of the corporations' purpose, and was done to further such purpose. There is no doctrine of exoneration of a charitable or religious order from civil responsibility for acts done within the scope of its corporate province, grounded upon the mere dedication of itself or of its funds to a charity”

It is respectfully submitted that as part of the damage to which the appellant is entitled, he is entitled to recover the compensation from his profession and calling that he would ordinarily have received and which he was deprived of by the tortious acts of the appellees.

(c) *It is prejudicial error to dismiss with prejudice, said claim:* As in the Order and Judgment pertaining to the first cause of action, the court ordered and adjudged

dismissed, the second cause of action, with prejudice. For the same reasons that it was prejudicial to so order and adjudge the first cause of action, it is prejudicial to likewise preclude the appellant from ever trying and determining his rights under the second cause of action. It is respectfully submitted that since the appellant had qualified himself and established himself as a Christian Science Practitioner and had been accepted and approved by the appellees as such, which approval, acceptance and qualification were indicated by the publication of appellant's name in the professional listing, which was considered and used by parties desiring the professional services of a Christian Science Practitioner as a professional reference registry for public information and since appellant followed an established usage and purpose of withdrawing his name from such publication during a sabbatical period and since he, at the conclusion thereof, in full accordance with usual and customary practices, was entitled to have the same reinserted and republished and was willing to pay all necessary charges or fees therefore and since no church procedure had been pursued that at any time would have justified the exclusion of his name, the failure and refusal on the part of the appellees to reinsert and republish appellant's name, constitutes a violation of his rights, both as an individual, a churchman and a Christian Science Practitioner, for which he is entitled to the relief sought in his first and second causes of action. It is respectfully submitted, as hereinbefore plead, that the same is prejudicial as to the dismissal with prejudice, of the first cause of action and it is further respectfully submitted, that for the same logical reasons, the same is prejudicial as to the second cause of action.

III.

That the Court's Summary Judgment as to the Third Count of Appellant's Second Amended Complaint, Is Not Supported by the Pleadings and Affidavits, and That It Was Prejudicial Error for the Court to Grant Summary Judgment as to Said Count.

(a) *Statement of Claim:* In the first paragraph of the third cause of action, appellant realleges the first twenty-five paragraphs of his first cause of action and paragraphs II and III of his second cause of action [p. 27]. Thus, all factual allegations are reinserted by reference and only allegations of damage have been excluded. Appellant alleges therein that thereafter he pursued the advanced studies of his faith and the research and publication of a book during the period of his sabbatical leave [par. II, p. 27]; the adherence of said book to the principles and precepts of Christian Science and its educational purposes to non-Chrsitian Scientists, sporadic Christian Scientists, the clergy of all faiths, and the medical profession [par. III, p. 27]; his tender of the manuscript to the appellees for their consideration and their refusal to examine the same or advise appellant in regard to the publication thereof [par. IV, p. 29]; his publication thereof after an elapse of several months [par. V, p. 29]. Thereafter, there is alleged the conspiracy of the appellees to hinder, delay and deny the circulation of said book, both "amongst the members of the Christian Science faith and the members of the public generally" and the overt acts of the appellees in furtherance of such conspiracy [par. VI, p. 29]; that appellees were the vendees, sellers and distributors of literature to branch churches, the reading rooms thereof and to book stores and vendors of literature in general, and the man-

date of the appellees that if any of the same, including such vendors and sellers of written reading matter and books, were to handle or sell appellant's said book, the appellees would thereafter refuse to furnish them with written reading matter and books upon which they were dependent and which were requisite to the maintenance of their business establishments [par. VII, p. 31]; the refusal to insert tendered advertisement in appellees' international newspaper of general circulation, and the failure to reinsert appellant's name as a Christian Science Practitioner in the Christian Science Journal by reason of such conspiracy [par. VIII, p. 31]; that the acts of the appellees were without cause, justification or provocation and were arbitrary, unwarranted, wilful and malicious [par. IX, p. 32]; that by reason of the nature of said book, its public acceptance is dependent upon the status and position of appellant as an approved, authorized and registered Christian Science Practitioner [par. X, p. 32] and the diminution of the sales of said book to appellant's damage in the sum of \$100,000.00 [par. XI, p. 32] and a request for punitive damages for \$50,000.00 [par. XII, p. 32].

(b) *Findings of Fact, Conclusions of Law and Judgment of Trial Court:* Appellees' initial motion was to dismiss the third cause of action on the same grounds as they moved to dismiss the first and second causes of action [p. 36]. In its memorandum decision, the Trial Court indicated its preference "to treat the motion to dismiss, as a motion for summary judgment under Rule 12b and Rule 56 of the Rules of Civil Procedure, for the reason that matters outside the pleading, such as the Manual of the Mother Church in Boston, have been considered by the court" [p. 99].

Treating said motion to dismiss as a motion for summary judgment, the court made and entered the following Findings of Fact [p. 106]: The organization and functions of the appellee, The First Church of Christ, Scientist, in Boston, Massachusetts, to promote and disseminate Christian Science [par. a, p. 106]. That the appellee, Christian Science Board of Directors is a self-perpetuating trusteeship, having direction of all church matters [par. b, p. 106]. That the appellee, Christian Science Publishing Society is a trusteeship, which selects, approves and publishes the religious books and literature of the church [par. c, p. 107]. The admission of appellant as a member of said church and his approval and acceptance by the appellee church, and appellee, The Christian Science Board of Directors for listing as a Christian Science Practitioner in the Christian Science Journal. His voluntary removal of his name “*temporarily* from said listing for the purpose of enabling him to pursue and engage in further study and research in the field of Christian Science and the doing of expository writing pertaining to metaphysics . . .” (Emphasis ours.) His pursuit thereof and his written application for resumption and reinsertion of his name under said classified caption in the Christian Science Journal and the refusal of the appellees to resume or reinsert the publication of his name [par. d, p. 107]. His authorship and publication of the book in question during the period of his “*temporary*” withdrawal of listing [par. e, p. 108]. The refusal of the appellees to examine the manuscript or to communicate with appellant concerning said book or the publication thereof [par. f, p. 109]. His independent publication of such book [par. g, p. 109].

“That for the purposes of this motion the following allegations must be treated as true.

“ . . . ‘that defendants . . . conspired . . . to hinder, delay and deny circulation of said book . . . amongst the members of the Christian Science faith and among members of the public generally’ and ‘have impugned (*sic*) and vilified (*sic*) . . . the character, motives, ethical and professional standing of plaintiff in a manner . . . intended to injure, diminish, harm and destroy the value and status of such book’; that plaintiff has further so alleged, on information and belief, that said defendants ‘notified . . . branch churches, reading rooms (and) book stores . . . (not to) . . . sell or distribute . . . said book’ and that, if they did so, ‘defendants would thereafter . . . refuse . . . to subsequently furnish them with . . . literature . . . and books’ published by defendant Publishing Society; . . .”
[Par. h, p. 109.]

“That it is true, as plaintiff alleges, that ‘the “Manual of the Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts (by), Mary Baker Eddy” has been and now is the official By-laws of said (named) defendants’; that said by-laws governing defendants provide that ‘only the (said) Publishing Society of (said) The Mother Church selects, approves, and publishes the books and literature it sends forth’ and ‘the literature sold or exhibited in the Reading Rooms of Christian Science Churches shall consist only of . . . writings . . . by Mary Baker Eddy . . . (and) also the literature published or sold by The Christian Science Publishing Society’; that it is true, as plaintiff alleges, ‘that said reading rooms purchase all of their reading materials, of all types and descriptions,

exclusively from said defendant, The Christian Science Publishing Society.’” [Par. i, p. 110.]

“That also, under the ecclesiastical polity of said The Mother Church and under said bylaws governing defendants and all members of said The Mother Church, including plaintiff as a member thereof, and as set forth in said Manual, no member of said The Mother Church shall ‘buy, sell, nor circulate Christian Science literature which is not correct in its statement of the divine Principle and rules . . . of Christian Science’; and ‘a member of . . . (said) Church shall not patronize a publishing house or bookstore that has for sale obnoxious books.’” [Par. j, p. 110.]

The court also found concerning the appellees’ refusal to carry advertising matter, in the appellees’ international newspaper [par. k, p. 110].

From the foregoing Findings of Fact, the court concluded that the third count of the Second Amended Complaint presents no genuine issue as to any material fact, and that the appellees are entitled to a judgment as a matter of law [par. l, p. 111]. Summary Judgment was thereupon granted as to said third cause of action in favor of the appellees [p. 111].

(c) *The within count presents genuine issues as to material facts:*

The allegations of appellant’s Second Amended Complaint include by reference, specific provisions of the “Manual of The Mother Church . . .” that deal with Christian Science Practitioners, the disciplining or expulsion of a Christian Scientist from the church for the alleged offense of misteaching Christian Science [par.

XIII, p. 15]. Annexed to the complaint as Exhibit "A," are six sections thereof, concerning such subject matter [pp. 34-36]. It is further alleged in the complaint that the same constitutes the sole and only provisions of said by-laws that deals with the disciplining of members of the church or practitioners belonging thereto [par. XIII, p. 16]. The part of the Manual cited in Finding "i," is not set forth in the complaint nor in the exhibit thereto attached. The same was set forth in the exhibit annexed to the affidavit of Gordon V. Comer, in support of appellees' motion to dismiss [p. 76]. Thus, such exhibit to said affidavit and not any allegation of the Second Amended Complaint, is the basis upon which the court made the material Finding of Fact, upon which its Summary Judgment was predicated.

The court's ability to resort to exhibits is limited to the exhibits pleaded by the appellant.

Simons v. Pevay-Welsh Lumber Co. (1940), 113 F. 2d 812, 813.

The value of affidavits and their relationship to the type of motions involved, is set forth in the case of *Vale v. Bonnett* (1951), 191 F. 2d 334, where at page 337, the court held:

"The place of affidavits in connection with summary judgment was examined and stated in *Dewey v. Clark*, *supra*. After discussing authorities, Judge Fahy announced the rule that 'affidavits may be considered to ascertain whether an issue of fact is presented but they cannot be used as a brief to decide the fact issue.' 86 U. S. App. D. C. at p. 143, 180 F. 2d at p. 772."

To the same effect are the earlier cases of *Hart & Co. v. Recordgraph Corp.* (1948), 169 F. 2d 580, and *Alamo Refining Co. v. Shell Development Co.* (1949), 84 Fed. Supp. 325.

Assuming but not conceding that by reason of said affidavit, such Manual was properly factually considered by the court, still the same would not preclude the issue of material facts between the appellant and the appellees. Basically, in paragraph VII of the third cause of action of his Second Amended Complaint [p. 30], appellant alleged that branch churches and the reading rooms thereof and various book stores and vendors of literature, reading matter and books, were subject to the appellees' ultimatum not to sell appellant's book or be boycotted from further sales by appellees. In its Finding of Fact, the court noted such "book stores" but did not set forth the salient facts that "vendors of literature, written reading matter and books" were involved and the further fact set forth in said paragraph, that the reading matter disbursed by appellees was requisite to the maintenance of the businesses of said book stores and vendors [p. 31]. If the Manual be properly admissible to support the Findings of the court "that the literature sold or exhibited in reading rooms of the Christian Science Churches" is limited to the exclusion of appellant's book [Finding i, p. 110], or that members of the church may neither circulate, nor patronize a book store that has for sale, obnoxious matter, this would only involve branch churches or their reading rooms. This leaves unanswered the material issue of fact, whether appellant's book is obnoxious.

Again, assuming but not conceding such fact, there is the germane and material issue of fact concerning the

ultimatum, not to branch churches or the reading rooms thereof, but to book stores and the vendors of literature, written reading matter and stores precluding them from selling appellant's book or facing a boycott from appellees.

(d) *The Third Count states an actionable claim:* Predicated upon the established principle of law that all the facts of the complaint are conceded to have been proven or otherwise established for the purpose of the type of motions herein involved, it is the contention of appellant that the actions of the appellees, as set forth in said third cause of action of his Second Amended Complaint, indicate a claim upon which he is entitled to relief, particularly when considered with regard to the ultimatum of appellees to said book stores and vendors generally.

Title 15 of the United States Code, Annotated, dealing with restraint of trade, covers this situation. The following sections of said Title provides as follows:

"Section 1. *Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.* Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . .

* * * * *

"Section 14. *Sale, etc., on agreement not to use goods of competitor.* It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the Dis-

trict of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

“Section 15. *Suits by persons injured; amount of recovery.* Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee.”

The case of *United States v. Eastman Kodak Co.* (1915), 226 Fed. 62, involves a comparable situation. Eastman Kodak Co., upon acquiring the patent rights of photographic paper, required of dealers, the exclusive handling of their product. Any dealer who used a competitor’s product, was excluded from his dealership. The court, at page 79, held that these actions constituted an illegal restraint of trade.

In the case of *United States v. General Electric Co.* (1948), 80 Fed. Supp. 989, Chief Judge Knox of the District Court of the Southern District of New York, in ruling upon a matter involving restriction of contracts

pertaining to patented products distributed by the defendant, held at page 1009:

“ . . . The Sherman Act condemns not only the horizontal boycott directed against a competitor's business, *Fashion Originators' Guild v. Federal Trade Comm.*, 1941, 312 U. S. 457, 668, 61 S. Ct. 703, 85 L. Ed. 949, but also the vertical boycott, directed at controlling the terms and manner of distribution of the subject article. *United States v. Frankfort Distilleries*, 1945, 324 U. S. 293, 62 S. Ct. 661, 89 L. Ed. 951; *Paramount Famous Lasky Corp. v. United States*, 1930, 282 U. S. 30, 51 S. Ct. 42, 75 L. Ed. 145; *United States v. First National Pictures, Inc.*, 1930, 282 U. S. 44, 51 S. Ct. 45, 75 L. Ed. 151.”

In the case of *Radio Corporation of America v. Lord* (1928), 28 F. 2d 257, plaintiff, in its sales contracts, required of its dealer purchasers, the non-dealing in competitor's goods. The court, at page 260, held:

“However that may be, the defendant says that the so-called monopoly is lawful within the field of patented products, and that ‘a covenant which would be lawful in one license is equally lawful in 25 licenses, if its operation relates solely to the manufacture of the patented article itself.’ If it be conceded that, as an independent proposition, this statement may be sound, yet, if the contract for sale is made on the condition, agreement, or understanding that the purchaser shall not deal in the goods of his competitors, and the effect of the condition, agreement, or understanding may be to substantially lessen competition, or tend to create a monopoly, it is unlawful and prohibited by the Clayton Act. Section 3 of that act defines an illegal contract, ‘and the patent right confers no privilege to make contracts in themselves

illegal, and certainly not to make those directly violative of valid statutes of the United States.' *United Shoe Machinery Corp. v. United States*, 258 U. S. 451, 462, 42 S. Ct. 363, 68 L. Ed. 708."

Other cases following the principle of the *United States v. General Electric Co.*, *supra*, are *United States v. Waltham Watch Co.* (1942), 47 Fed. Supp. 524, and *United States v. Bauch & Lomb* (1942), 45 Fed. Supp. 387.

While the principle of *Radio Corporation of America v. Lord*, *supra*, is adhered to in the cases of *United States v. Keystone Watch Co.* (1915), 218 Fed. 502, and *United States v. Standard Oil of California* (1948), 78 Fed. Supp. 850, which cases hold as illegal, the creation of a boycott.

The foregoing principles of law pertaining to restraint of trade, have been enunciated by the Supreme Court of the United States.

In the case of *Eastman Kodak Co. v. Southern Photo. Materials Co.* (1927), 273 U. S. 359, the court considered a contract of the Eastman Kodak Co., which gave to the Southern Photo. Co., certain concessions in price for the non-handling of competitive products. When the latter did handle a competitive product, the Eastman Kodak Co. refused to sell it any merchandise. The court affirmed a judgment for damages on the theory that such actions constituted a restraint of trade.

In the case of *Montague & Co. v. Lowry* (1904), 193 U. S. 38, the court considered a contract of an association of wholesale dealers of tiles and like products in San Francisco, which placed prohibitions upon dealings by its members with non-members. At page 46, the court

noted that it was the desire of the association to require all dealers in such industry to join it for their general betterment. However, the court concluded at page 48, that such agreement was in restraint of interstate commerce and affirmed a judgment of the trial court, so holding the same.

In the case of *Fashion Originators Guild of America, Inc. v. Federal Trade Commission* (1941), 312 U. S. 457, the Guild prohibited its members from selling to retailers who handled duplications of the styles originated by its members. The case is similar to the case at bar, since the purpose was not to create any monopoly, but only prohibited dealing with duplicators who had incurred the displeasure of the Guild and its members. The court held that the failure to create a monopoly did not make such an agreement legal, but that the boycott thereby created, was in restraint of trade, stating at page 467 that the purpose of combination was the intentional destruction of the obnoxious form of duplication, thus creating competition with Guild members. The court concluded at page 468:

“ . . . Nor can the unlawful combination be justified upon the argument that systematic copying of dress design is itself tortious, or should now be declared so by us. In the first place, whether or not given conduct is tortious is a question of state law, under our decision in *Erie R. Co. v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1186, 58 S. Ct. 817, 114 A. L. R. 1487. In the second place, even if copying were an acknowledged tort under the law of every state, that situation would not justify petitioners in combining together to regulate and restrain interstate commerce in violation of Federal law. And for these same reasons, the principles declared in *Inter-*

national News Service v. Associated Press, 248 U. S. 215, 63 L. Ed. 211, 39 S. Ct. 68, 2 A. L. R. 293, cannot serve to legalize petitioners' unlawful combination"

It is respectfully submitted that the actions of the appellees as alleged and set forth in appellant's Second Amended Complaint, brings their conduct within that condemned by the foregoing cases and that appellant's claim predicated on such conduct, is both valid and proper.

(e) *That the affidavits relied upon by the appellees in support of their motion do not comply with Rule 56e and that it was prejudicial for the court to consider the same.* As indicated hereinbefore, in appellant's Specification of Errors, it is the contention of appellant that the affidavits relied upon by the appellees in support of their motions, do not comply with said rule and that such affidavits do not "show affirmatively that the affiant is competent to testify to the matters therein stated." Basically, the Findings of the court are predicated upon provisions contained in the Manual, which is made an exhibit annexed to the affidavit of Gordon V. Comer [p. 75]. Mr. Comer, in his affidavit, sets forth his church position, pursuant to said exhibit, but does not in any manner, authenticate such Manual in such affidavit. An examination of his affidavit indicates his activity for more than five years last past, but his assertions concern facts occurring in 1879, 1889 and 1892. The same, factually, do not constitute facts that he could testify to of his own knowledge. The authenticity of such Manual is predicated upon the certification of Hazel A. Firth, manager of the executive office, which is neither verified nor otherwise sworn to [p. 80]. Of the remaining four affidavits filed on behalf of the

appellees, in the affidavits of Clayton B. Craig [p. 54] and Alfred Pittman [p. 71], the conclusion is set forth that Exhibit "A" annexed to said affidavit of Gordon V. Comer is a true copy of the Manual. No facts are stated indicating its adoption, the date or manner thereof or the source of the knowledge upon which such statement is made. Such affidavits do therefore not comply with the mandate that they must affirmatively show that the affiant is competent to testify to the matters stated therein.

It does not appear that the other subject matter, of said other four affidavits, were considered by the court in adjudicating the summary judgment, but if subsequent contentions be made by the appellees that the same were germane, appellant reserves the right to supplement his present contention that such affidavits in their other statements, do not comply with said rule. Each of such affidavits contains hearsay matter and facts either not admissible into evidence or which the respective affiant is not competent to testify to.

(f) *That said Summary Judgment is prejudicial.* Predicated upon a similar situation of pleading and summary judgment, this Honorable Court held in the recent case of *Hoffman v. Babbitt Bros. Trading Co.* (1953), 203 F. 2d 636, in reversing a summary judgment of the trial court, at page 637:

“‘ . . . Therefore, the judgment cannot validly be based upon the summary trial by affidavits. The plaintiff-appellant is entitled to have its complaint responded to by answer and both parties are entitled to have the issues tried through the introduction of exhibits and witnesses produced for direct and cross examination.’ This is a statement of the general law and we know of no deviation from it. In giving

these principles effect, we find the United States Supreme Court in *Associated Press v. United States* (1945), 326 U. S. 1, 6, 65 S. Ct. 1416, 1418, 89 L. Ed. 2013, saying: ‘. . . We agree that Rule 56 should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them . . .’

There is a very strong and genuine issue as to material facts left in the case when the complaint is laid beside the answer and the affidavits. The *ex parte* statements of the officer of Babbitt’s and the county officials, even in affidavit form, do not foreclose other evidence being brought forth in the trial as to just what part Babbitt had in the matter.”

It is respectfully submitted that by reason of said material issues and particularly the material issue concerning the conduct of the appellees with the book stores and vendors of literature, that the summary judgment granted by the court was improper and prejudicial to appellant.

Conclusion.

Appellant respectfully submits that for reasons and principles of law herein set forth, the judgment of dismissal, as to the first two causes of actions of his Second Amended Complaint and the summary judgment as to the third cause of action of said complaint, should be reversed.

Appellant invites the court’s attention to the basic rule of law that the law favors a trial upon the merits of every controversy, as has been stated in *Woods v. Hillcrest Terrace Corporation* (1948), 170 F. 2d 980, at 984:

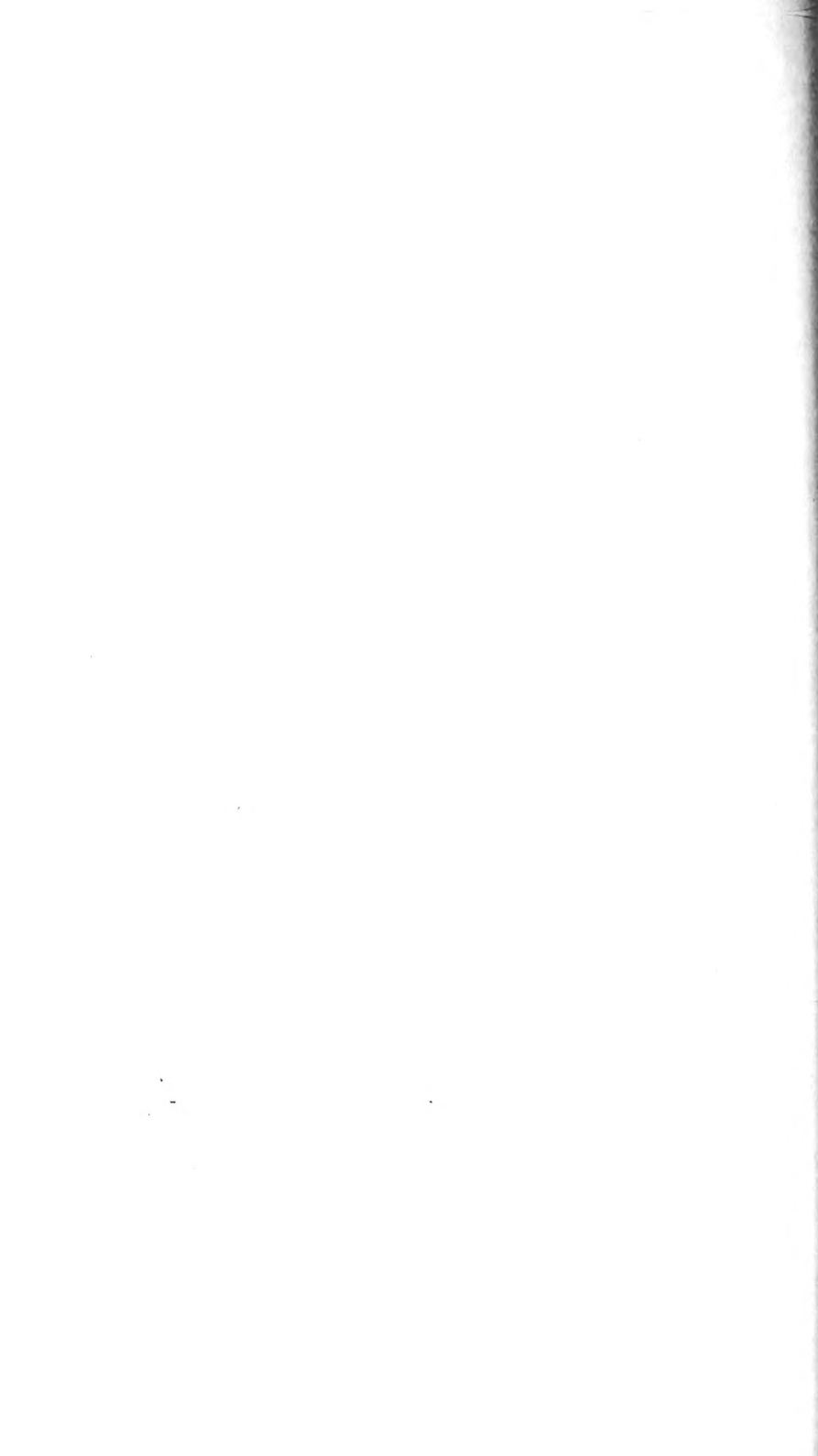
“ . . . there is no justification for dismissing a complaint for insufficiency of statement, except where

it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim pleaded. *Leimer v. State Mutual Life Assur. Co.*, 8 Cir., 108 F. 2d 302, 306; *Sparks v. England*, 8 Cir., 113 F. 2d 579, 581, 582; *Cohen v. United States*, 8 Cir., 129 F. 2d 733, 736; *Louisiana Farmers' Protective Union, Inc. v. Great Atlantic & Pacific Tea Co.*, 8 Cir., 131 F. 2d 419, 423, 424; *Musteen v. Johnson*, 8 Cir., 133 F. 2d 106, 108; *Publicity Building Realty Corporation v. Hannegan*, 8 Cir., 139 F. 2d 583, 586; *Cool v. International Shoe Co.*, 8 Cir., 142 F. 2d 318, 320; *Dennis v. Village of Tonka Bay*, 8 Cir., 151 F. 2d 411, 412; *Montgomery Ward & Co., Inc. v. Langer*, 8 Cir., 168 F. 2d 182, 185."

Respectfully submitted,

EUGENE L. WOLVER,

Attorney for Appellant.



IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2D,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, ETC., *et al.*,

Appellees.

APPELLEES' ANSWERING BRIEF.

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No. 14195

IN THE

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FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2D,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, ETC., *et al.*,

Appellees.

APPELLEES' ANSWERING BRIEF.

No Federal Jurisdiction.

The first seven pages of Appellant's Opening Brief attempt, but fail, to show federal court jurisdiction. There is pending a Motion to Dismiss Appeal. After argument, the motion was, by order of this Court, continued for further hearing at the time of argument on the merits. Appellees submitted Points and Authorities in Support of Motion to Dismiss, appellant submitted Answering Points and Authorities, and appellees served and filed a Reply Memorandum of Points and Authorities. Oral argument was made on May 17, 1954, and then this court continued the Motion as stated.

Careful analysis and application of the governing principles of law will, we believe, show that neither by his complaint, nor the Record, nor his Opening Brief, has appellant discharged his affirmative burden to show federal jurisdiction. This, we respectfully urge, makes consideration on the merits unnecessary.

It would burden the Court to repeat the argument already filed and submitted showing, as we feel, that there is no federal jurisdiction.

Facts From the Record.

The court below dismissed the first and second counts of the Second Amended Complaint on the ground that each failed to state a claim for relief. Consequently, the material facts relating thereto are from the face of appellant's complaint. The motion to dismiss the third count was treated by the trial court as a motion for summary judgment, and dismissal entered for the reason that there was no genuine issue of material facts. Therefore, the third count dismissal involves facts on the record in addition to those from the face of the Second Amended Complaint.

This statement will avoid the formalistic language of the pleadings, and states the facts shown by the record in "everyday" terms.

Appellant became a member of The Mother Church in 1930 (par. XIV, p. 16*). Sometime thereafter he had class instruction in Christian Science, and made a showing that as of 1934 he was qualified for publication of

*References are to the Printed Transcript of Record.

his name, address and telephone number in *The Christian Science Journal* under the classified caption "Christian Science Practitioners and Teachers" (par. XV, pp. 17, 18). Appellant paid the annual charge for such listing until October 17, 1949, when he voluntarily withdrew therefrom (par. XV, p. 18).

(Parenthetically, "class instruction" in Christian Science means a two weeks' course of intensive teaching and study, and is intended to develop and increase the individual's understanding of Christian Science. It does not necessarily imply that the individual will immediately, or ever, professionally become a Christian Science practitioner. Relatively few such students do become full-time Christian Science practitioners. Many who are not listed in the *Journal* engage part-time or wholly in healing by prayer as taught in Christian Science. Some of such individuals gradually engage in full-time healing ministry as Christian Science practitioners, and then are listed in the *Journal* if they prove to the satisfaction of The Christian Science Board of Directors their eligibility [par. 5, pp. 72-74]. No one but that Board can make that determination.)

Appellant voluntarily withdrew his listing in October, 1949. Then he wrote and had published a book called "God on Main Street" (par. II, p. 27). Appellant, himself, states his motive and purpose in writing his book was to present "* * * the teachings, precepts, purposes, and blessings of Christian Science * * * in a manner that would be entertaining, appealing, understandable, and readily acceptable * * * (to those) who have been and are prejudiced against Christian Science * * * (and to those) who are Church Members but

who may be sporadic Church attendants * * * to the clergy of all faiths * * * (and) to the medical profession" (par. III, p. 28). Appellant asserts that his book is "an explanation and dissertation of, on and concerning the beliefs and teachings of Christian Science" (par. X, p. 32). (Parenthetically, his whole problem is the feeling that others *must* accept his concepts.)

On July 21, 1950, appellant tendered the manuscript of his book, "God on Main Street," to appellees for publication. He says appellees made no comment or request to examine the manuscript (par. IV, p. 29). Appellant then had his book printed and published elsewhere, had it copyrighted and sent a copy to appellees (par. V, p. 29).

May 10, 1951, appellant applied for reinsertion of his name in the *Journal* as a full-time practitioner (par. XVIII, p. 20). Appellees have failed to resume such advertisement-listing (par. XIX, p. 20).

Appellant has not been disciplined or removed as a member of appellee-Church, nor has any disciplinary action been taken against him as a practitioner. He still has the right to practice Christian Science (par. XIX, p. 20), but, plaintiff-appellant asserts, failure to resume the advertisement-listing has "handicapped and prevented" appellant in resumption of his practice (par. XXIV, p 23).

Appellant also complains that appellees refused to advertise his book in *The Christian Science Monitor* (par. VIII, p. 31).

Next, but only on information and belief, appellant asserts that appellees "conspired * * * to hinder, delay and deny circulation of said book * * * amongst

the members of the Christian Science faith and among members of the public generally * * * (and) have impugned (*sic*) and vilified (*sic*) * * * the character, motives, ethical and professional standing of plaintiff (appellant) in a manner * * * intended to injure, diminish, harm and destroy the value and status of said book" (par. VI, pp. 29, 30); also that appellees "* * * notified * * * branch churches, reading rooms, book stores and sellers of literature * * * (not to) sell or distribute * * * said book" and that, if they did so, appellees would thereafter "refuse * * * to subsequently furnish them with * * * literature" published by appellee Publishing Society (par. VII, pp. 30, 31).

The Manual of The Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, governs appellees and appellant as a member of that Church (par. XIII, pp. 15, 16). The Manual by-laws provide that "only the (said) Publishing Society of (said) The Mother Church selects, approves, and publishes the books and literature it sends forth" (Manual, Art. XXV, sec. 8, p. 81) and that "the literature sold or exhibited in the Reading Rooms of Christian Science Churches shall consist only of * * * writings * * * by Mary Baker Eddy * * * (and) also the literature published or sold by the Christian Science Publishing Society" (Manual, Art. XXI, sec. 3, p. 64). "That said reading rooms purchase all their reading materials, of all types and descriptions, exclusively from * * * The Christian Science Publishing Society" (par. VIII, p. 12).

Also, under the ecclesiastical polity of The Mother Church and under the Manual by-laws governing appel-

lees and all members of The Mother Church, including appellant as a member thereof, no member shall “buy, sell, nor circulate Christian Science literature which is not correct in its statement of the divine Principle and rules * * * of Christian Science”; and “A member of this Church shall not patronize a publishing house or bookstore that has for sale obnoxious books” (Manual, Art. VIII, secs. 11, 12, pp. 43-44).

Facts are in large measure taken from the Second Amended Complaint with appropriate references. Such facts, plus additional undisputed facts from the official by-laws of appellees (a part of the record herein) were found by the Trial Court to be true (Findings (i) and (j), p. 110). They are the basis upon which the Court dismissed the third count (par. 5, pp. 106-111) on motion for summary judgment.

Preliminary Observations of Relief Sought.

Before analysis of the formal causes pleaded and theories argued in support thereof, it will be helpful to see how naively appellant discloses the real purpose of his lawsuit. It is to promote the sale of his book. He pleads that:

“* * * said book, ‘God on Main Street’ is an explanation and dissertation of, on and concerning the beliefs and teachings of Christian Science and that said book’s acceptance by the public in general and members of the Christian Science faith is *dependent upon the status and position* of plaintiff as an approved, authorized and registered Christian Science Practitioner.” (Par. X, p. 32.) (Emphasis added.)

Appellant's zeal for his book blinds him to the fact that he seeks to bludgeon an ecclesiastical body, charged with sincere exercise of its own spiritual discretion and judgment, into acceptance of appellant's views. His zeal for his book leads him into the assertion that his freedom to speak and write takes away appellees' freedom not to officially approve what appellant writes.

Plaintiff-appellant withdrew his *Journal*-listing as a practitioner. He wrote his book and then said to appellees:

(1) Here is an "explanation and dissertation * * * concerning the beliefs and teachings of Christian Science * * *"

(2) Now, even though under the Manual by-laws you, as Directors, are responsible for the Christian Science movement and have the responsibility of deciding what is correct literature about Christian Science and of determining its proper means of distribution, I insist that my book is correct and desirable and you should give it direct, or at least implied approval, and I insist that you *must*

- (a) accept and examine my book or manuscript;
- (b) publish a review of it;
- (c) advertise it in your newspaper;
- (d) publish and circulate it through branch church Reading Rooms;
- (e) let it be sold in association with your own official Christian Science publications;
- (f) put my name back in the *Journal*-listing as qualified to practice Christian Science healing because thereby a wholly extraneous purpose may be accomplished—that is, "said book's acceptance by the public in general and members of

the Christian Science faith is dependent upon * * * (my) status and position * * * as an approved, authorized and registered (or listed) Christian Science Practitioner;”

(3) And, if you don't do these things, I shall sue you, and charge that you have

(a) prevented me from doing healing work by prayer (which anyone, listed or not, may do in proportion to his consecration and spirituality, as exercise of his religious freedom);

(b) Conspired to hinder, delay and prevent circulation of my book by

(i) refusing to let me use a practitioner's listing as a means of promoting my book and its concepts of Christian Science; and

(ii) refusing to publish, to advertise, to sell, to associate your religious literature with my book, or otherwise give direct or implied ecclesiastical sanction to my book;

(4) And, I will argue (although I won't plead or charge it) that you, in carrying out your ecclesiastical duty under the Manual by-laws, are unduly restraining interstate commerce and violating the federal anti-trust laws to my personal detriment.

A fair analysis of appellant's pleading and brief and the Manual, which appellant himself pleaded, will show just such a strange mixture of brash temerity and naivete as outlined above. Yes, more: It will show the extraordinary notion that appellant's freely conceded right to author, publish and promote becomes in appellant's view the complete deprivation of the right of those in ecclesiastical authority to do their duty, or even to refuse to join in promoting what they cannot approve. He would utilize

the church publications and procedures to promote sale of his book.

Appellant's zeal for his own concept of the beliefs and teachings of Christian Science impels him to say that *his* judgment must prevail over those with whom final ecclesiastical discretion is vested; that failure to concur with appellant's concept means conspiracy to do wrong—even violation of the Sherman Anti-Trust Act. No matter how sincerely appellant feels that *he* is more able to present religious teachings of Christian Science to the world than those having responsibility therefor, the law does not give him the right to *force* direct or implied approval of his views. Appellant's expressed purposes in writing his book are worthy. They certainly are not decried. His freedom to write and publish in this blessed land of guaranteed freedom is complete! No one seeks to stand in his way, so long as he *stands on his own responsibility* for what he has written, and lets his writings be considered on their *own merit*. Appellant has the *freedom to speak*; appellees also have the *freedom of not having appellant speak for them*, and for the whole Christian Science movement.

Appellant would turn his freedom to speak and publish into a claim of legal and commercial damage because appellees *dared not to speak* and *dared not to give him status* which would promote his "book's acceptance by the public in general and members of the Christian Science faith" in particular. If appellant could force direct or indirect approval of his views by this lawsuit, he would have discovered a means of exacting publication promotion from those who could not approve his views—yes, by those vested with responsibility for preserving purity of a religious teaching. Freedom to speak, as

freedom of religious views, is a two-way street. Freedom of appellant to write or speak for *himself* cannot, by appellant's *ipse dixit*, be made his authority to write and speak for *others*.

But how does appellant present his position? His complaint is divided into three purported causes of action. Appellant's first and second causes are each predicated upon appellees' refusal to reinsert his name, address and telephone number along with *Journal*-listed practitioners. By the first count he seeks to compel reinsertion; by the second count he claims damages. The third count incorporates the allegations of the prior two counts, and adds the information-and-belief assertion of conspiracy to interfere and suppress sale of appellant's book. Not until his last argument in the Court below did plaintiff-appellant think of bolstering his case by arguing what he never pleaded, violation of the Sherman Anti-Trust Act.

Appellant Did Not State a Claim for Relief in Either the First or Second Count of Second Amended Complaint.

Appellant contends that he has a legal right to compel reinsertion of his name, address and telephone number as an advertisement-listing in the *Journal*.

He affirms that he has not been deprived of his right to practice the calling of the healing ministry by any church procedure or other legal means (App. Op. Br., p. 15). No one could deprive appellant of the religious freedom to practice Christian Science. Failure to reinsert such listing is asserted to be a deprivation, *not* of the *right* to practice, but simply of *approval* of his *status* as a Christian Science practitioner; and such deprivation of approval is construed as the "sole means" of depriving appellant indi-

rectly of his right to practice Christian Science (App. Op. Br., pp. 15, 19). In effect, appellant complains that appellees will not *aid him*. He complains of non-action or non-feasance. He claims he must have the advertising value of the *Journal*-listing which would hold him out as approved for practicing a healing ministry; that appellees must give implied approval of appellant's educational, spiritual and moral qualifications to bolster his status as a Christian Science practitioner, even when appellant naively admits that he wishes the listing to promote sale of his book. The *Journal*-listing is not an approved authors' list.

Whether any man is at any given time to be officially listed as qualified to practice and teach Christian Science, or any other religious faith, is an internal ecclesiastical matter. No civil court is equipped to review or make such determination for any religious body. Even more so, the endorsement of such qualifications by listing in appellees' religious publication is an ecclesiastical matter. The civil courts can not exercise that judgment for a church; and they have uniformly declined to do so.

In order to bring the subject matter of the alleged non-feasance within the jurisdiction of civil courts, appellant emphasizes "professional" standing with independence from church control, particularly from an economic standpoint. He asserts his right to practice and teach Christian Science as a "property right." By argument, appellant says in effect: "Once qualified, always qualified." "Because you found me qualified educationally, spiritually and morally in 1934 to be *Journal*-listed, I have a 'property right' for continuous approval which a civil court must protect, even though you may feel that until I cease to be obsessed with a desire to use that approval to promote sale of my book I should not again be listed."

Although appellant would characterize a practitioner's calling as a mere "property right," instead of a ministry of healing through prayer (a view, the very statement of which is shocking), the determination of whether appellees shall (by accepting his listing in the *Journal*) impliedly approve his educational, spiritual and moral qualifications to publicly practice Christian Science healing is, we repeat, solely a matter within the religious body. Appellant would have this Court sit on a question of spiritual fitness to be a practitioner; he asks that appellees be required to give their implied endorsement consequent on advertising appellant in the *Journal*. None of appellant's authorities even remotely tend to clothe any Court with jurisdiction or the peculiar ecclesiastical qualifications necessary to adjudicate such question. Imagine courts seeking to qualify themselves to exercise ecclesiastical polity every time any dissident member of any religious group sought to force his views and statements on the balance of that religious body by a court-exacted approval of what in fact the church-governing board could not approve!

Appellant quotes from two recent California Supreme Court cases which apply the general rule that courts will not interfere with religious societies in regard to their ecclesiastical practices; that only civil and property rights of such bodies and members thereof, are the proper subject of adjudication in the secular courts. (*Providence Baptist Church v. Superior Court*, 1952, 40 Cal. 2d 55, 251 P. 2d 10; *Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church*, 1952, 39 Cal. 2d 121, 245 P. 2d 481.) In both these cases, civil and property rights were the subject of litigation. In the *Providence Baptist Church* case the church brought a declaratory relief action to determine whether it had properly followed the estab-

lished procedure in removing its pastor. Also it sought to recover church funds and documents in the possession of the pastor. It is noteworthy how meticulously the Court disclaimed jurisdiction over the very type of question which appellant vainly sought below and now seeks to have this Court adjudicate. Near the end of the opinion, the Court said (bottom page 63, California Report):

“If the problem was whether the pastor was preaching a theology contrary to the denominational doctrine or conducting religious services in a manner out of harmony with the ritual of the church, it would clearly not be within the province of a Court to interfere, and the controversy would have to be settled by the church tribunals.”

To paraphrase the California Supreme Court, in the case at bar: Whether Swan correctly wrote “an explanation and dissertation * * * concerning Christian Science” or whether appellees should impliedly endorse Swan’s educational, moral and spiritual qualifications to publicly practice Christian Science healing so as to secure “acceptance by the public * * * and members of the Christian Science faith” for his book, or whether appellees should give his book express or implied approval, are questions clearly not within the province of a Court to interfere.

Also in the *Rosicrucian* case the litigation concerned title and right to use of real and personal property as between two litigating factions of the Rosicrucian philosophy. The court sustained jurisdiction to adjudicate property matters, but again carefully drew the distinction between ecclesiastical matters and civil and property rights.

Near the bottom of page 131 of the opinion as reported in the official California Reports, the Supreme Court says:

“The matter has been generally summarized: ‘It is obvious that no case can reach the civil courts unless it involves some property or other civil right. The courts of the land are not concerned with mere polemic discussions, and cannot coerce the performance of obligations of a spiritual character, or adopt a judicial standard for theological orthodoxy, or determine the abstract truth of religious doctrines, *or adjudicate whether a certain person is a Catholic in good standing*, or settle mere questions of faith or doctrine, or make changes in the liturgy, or dictate the policy of a church in the seating of the sexes, or the playing of instrumental music, or decide who the rightful leader of a church ought to be, or *enjoin a clergyman from striking the complainant’s name from his register of communicants*, or enforce the religious right of a member to partake of the Lord’s Supper.’ (American Church Law, Zollman, Sec. 313.)” (Emphasis added.)

There are two cases in which Kosher meat dealers asserted a “property” status in their established business of selling Kosher meat to adherents of the Jewish faith. In such case the livelihood of the dealer depended upon the wholly commercial business of merchandising Kosher food in regular commerce to the people of the Jewish faith. The dealers complained that the church had no right to terminate their supply of Kosher products. The court in both cases held that it was an ecclesiastical question and solely for the church to determine whether the dealers should be supplied with Kosher meat, and that the civil courts were without jurisdiction to give the dealers any relief. (*Cohen v. Silver*, 277 Mass. 230, 178 N. E. 508; *S. S. & B. Live Poultry Corp. v. Kashruth Ass’n*, 158 Misc. 358, 285 N. Y. Supp. 879.)

Under no circumstances do publishers have any affirmative duty to accept tendered advertisement-listing. Even in an ordinary situation, to compel *Journal*-listing, appellant would have to show a duty to advertise his name, address and telephone number. There is no such legal duty. And here where it implies current approval of spiritual and religious qualification, such listing is not a matter for court determination.

Even in ordinary situations, the authorities are uniform that a newspaper or magazine has no legal obligation to accept tendered advertising. (*Shuck v. Carroll Daily Herald*, 215 Iowa 1276, 247 N. W. 813, 87 A. L. R. 975; *Reeda v. The Tribune Co.*, 218 Ill. App. 45; 66 C. J. S. 47, Newspapers, Sec. 21; Thayer on *Legal Control of the Press*, 2d Ed. 1950, p. 128, Sec. 27.)

In *Reeda v. The Tribune Co.*, *supra*, a candidate for judicial office claimed that the newspaper had intentionally omitted his name from specimen primary ballots prepared by the Illinois Election Board and printed in the newspaper. The court held that there was no duty to include plaintiff's name as a candidate along with the others printed on the specimen ballot.

It was contended in these newspaper advertisement cases that newspapers and magazines are "clothed with a public interest" and that it must accept tendered advertising. The merchants and people who sought to force the advertisements asserted that failure to accept their advertising indirectly caused them damage in competitive commercial enterprises.

Appellant's position is much weaker than an entrepreneur in the competitive commercial market. Here, plaintiff-appellant cannot get court assistance to force *Journal*-

listing so as to show Church-approved qualification for healing ministry. Appellant feebly tries to convert his religious calling of healing by prayer into a “property right” or commercialized activity. He completely ignores his burden to establish an affirmative legal duty of appellees to aid him in using and turning a wholly religious calling into the means of promoting sale of a book.

Appellant’s Third Count Viewed in the Light of Competent Affidavit-evidence, Presents No Genuine Issue of Material Facts. Summary Judgment Was Proper.

There Was Competent Evidence Before the Trial Court.

At pages 9 and 36 of Appellant’s Opening Brief he contends that the trial court considered incompetent evidence which cannot be relied upon to support a summary judgment because affidavits bringing such evidence into the record do not “show affirmatively that the affiant is competent to testify to the matters therein stated,” as required by Rule 56(e).

The findings in support of summary judgment (pp. 106-111) are based almost wholly upon allegations of appellant’s complaint. Only findings (i) and (j) on page 110 of the Transcript of Record contain material facts outside appellant’s pleading. Yet even these two findings are based on the official by-laws governing appellant and appellees contained in the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy. Moreover, appellant himself pleaded this Manual to be such official by-laws (par. XIII, pp. 15, 16), and in finding (i) the Trial Court found this allegation of plaintiff-appellant to be true. Appellant himself has produced copies of said Manual in this Honorable Court

as part of the record on appeal. He now complains of the competency of the very Manual he pleaded below and made part of the record here.

Moreover, the Manual was also introduced into the Trial Court record as an exhibit attached to the affidavit of Gordon V. Comer, shown affirmatively to be an officer, to-wit, the Clerk of appellee, The First Church of Christ, Scientist, in Boston, Massachusetts, whose office and duties are set forth in the Manual (pp. 75, 76); and further, as part of that affidavit, Hazel A. Firth, Manager of the Executive Office of the Trustee-Directors of said Church, and custodian of the records of said Church, certified the attached Manual to be a "true and correct copy thereof and constitutes the law, rules, by-laws and polity of the Christian Science religious denomination" (p. 80). The affidavit of Clayton B. Craig affirmatively shows affiant to be one of the five Trustee-Directors who are charged with the responsibility of managing and directing the affairs of appellee Church. Craig also affirmatively identified the copy of Manual attached to the Comer affidavit as a "true copy" (pp. 53, 54). The same is true of the affidavit of Alfred Pittman, who is affirmatively shown to be chairman of said Trustee-Directors (pp. 71, 72).

There Is No Genuine Issue as to Any Material Facts.

None of the findings of fact in support of summary judgment as to the third cause of action resolved a fact conflict. All of said findings are based upon the material fact allegations of appellant's third cause of action, except portions of findings (i) and (j) on page 110 of Transcript of Record. Portions of findings (i) and (j) are quoted from the official by-laws, which govern both appellant, as member, and appellees.

Manual quotations in finding (i) simply establish uncontroverted facts that the duty to “select, approve and publish books and literature it sends forth” (Manual, Art. XXV, sect. 8, pp. 81, 82) is solely vested in appellee Publishing Society; also that Readings Rooms of branch churches are restricted in the sale and exhibition of religious literature to that which is published or sold by appellee Publishing Society (Manual, Art. XXI, sect. 3, p. 64). Such facts do not create a conflict with any material allegation of appellant. Indeed, appellant’s own complaint (par. VII, p. 12) alleges: “* * * That said reading rooms purchase all their reading materials, of all types and descriptions, exclusively from said defendant (appellee), The Christian Science Publishing Society.” In finding (i) this allegation was also found to be true (p. 110).

The by-laws, when coupled with appellant’s own allegations, show the absurdity of appellant’s effort to allege conspiracy, when he charges that appellees induced or saw fit to induce branch church Reading Rooms to ban sale of appellant’s book. In one breath, appellant affirms that branch church Reading Rooms acquire, and must acquire, their religious literature *exclusively* from appellee Publishing Society, and, in the next breath, appellant contends violation of the anti-trust laws if appellees remind Reading Rooms of the by-laws which restrict them to appellees’ religious literature. The by-laws produce no conflict with what appellant had already alleged; the by-laws affirm the exclusive source of religious literature sold and exhibited in Reading Rooms.

Finding (j) in support of summary judgment (p. 110) quotes from these same official by-laws, adopted for the guidance of all Church members, including appellant and

all appellees. They provide that no member of appellee Church shall “buy, sell, nor circulate Christian Science literature which is not correct in its statement of the divine Principle and rules * * * of Christian Science” (Manual, Art. VIII, sect. 11, p. 43), and that “A member of this Church shall not patronize a publishing house or bookstore that has for sale obnoxious books” (Manual, Art VIII, sect. 12, p. 44).

These by-laws do not give rise to a legal fact issue as to whether appellant’s book is a correct concept of Christian Science doctrine, or whether “God on Main Street” is or is not an “obnoxious” book in the light of church polity or appellees’ own peculiar religious doctrine. A civil court is not equipped to decide, nor is it the least concerned with whether a church member complies with church doctrine or teachings, or whether a member has violated a by-law designed to prevent adulteration of church doctrine or teachings. Whether appellant’s book is an adulteration of Christian Science doctrine or teaching, and whether it is an “obnoxious” book, is not, and cannot be, a genuine issue in appellant’s law suit. It is solely a matter of ecclesiastical polity.

Said Manual by-laws quoted in finding (j) illustrate the exercise of religious freedom of a church to prevent adulteration of its own religious literature. Official religious literature of a church is not a commercial product to be sold in the competitive market of our business world. Swan, as a member of appellee Church, can not *force* sale or exhibition of his own concept of Christian Science doctrines and teachings alongside the official religious literature of appellee Church. The religious freedom of a church to publish and distribute its doctrines and teachings

certainly includes the right to preserve the purity thereof. Religious doctrines and teachings of a church are kept pure by ecclesiastical control of its official literature, and also by concern for that with which its official literature may be associated. The Manual by-laws obligate appellees to exercise ecclesiastical judgment in selecting unadulterated outlets for its official religious literature.

We repeat, whether Swan's book, "God On Main Street," does or does not correctly conform to Christian Science doctrines and teachings is not an issue in this lawsuit. Such question is an ecclesiastical matter outside the concern of a civil court. The quoted Manual by-laws in finding (j) in no sense contradict appellant's pleading and do not create a material fact issue, and such finding is not the result of factual conflict.

Not a Matter of Disciplinary Proceedings Against Appellant.

Among other elements thrown into, but never related to any legal issue in appellant's complaint, is that no charges, accusations or disciplinary proceedings have been had against him under the Church by-laws. If that shows anything, it shows almost immeasurable patience by appellees with appellant. Is appellant saying that he *should be* disciplined as a member of appellee Church?

The fact of record is that no disciplinary proceedings have been taken against appellant. But there is not, and cannot be, an allegation that because he is an undisciplined member of the Church he is thereby legally entitled to listing as a qualified and approved practitioner. The *Journal*-listing is not a membership list. And certainly it is not a list of authors.

What appellant argues is that somehow Courts should intervene because appellees did *not* do certain things. They (1) did *not* discipline him as a member; (2) they did *not* endorse or approve or publish or sell his book; (3) they did *not* review his book; (4) they did *not* advertise his book; (5) they did *not* indirectly promote his book by advertising or listing him for a wholly different purpose—that of practitioner.

An Unpleaded After-thought Assertion—The Sherman Anti-Trust Laws.

The Court below well observed that “in his brief, but not in his complaint (it was a *second* amended complaint) the plaintiff (appellant) attempts to bolster the third cause of action by contending his action is one for violation of antitrust law” (pp. 100, 101; parenthetical matter added).

Appellant’s Opening Brief continues this “bolstering” effort, by citing some wholly irrelevant law and decisions. We feel thoroughly apologetic for being forced to lengthen our brief with answer to such discussion, but feel we must deal with the point.

On what does appellant base his after-assertion of anti-trust violation?

(1) That appellees have interfered with or prohibited sale of appellant’s book in Christian Science Reading Rooms. This he says on information and belief. Yet, the Manual by-laws, which govern appellant and appellees alike, preclude sale of his book in those Reading Rooms because it was not selected, published or sold by the Publishing Society.

(2) Appellant also says he is informed and believes that appellees have interfered with sale of his book in bookstores generally by advising them if they sell appellant's book, appellees will not distribute authorized Christian Science literature through such stores.

Here again is unique application of legal doctrine in antitrust laws. Appellant contends that church officers of a religious group, charged with preserving purity of the peculiar religious movement of which they are a part, *must* sell their literature *in association with* (and so give implied approval by association to) that which they may disapprove or simply have not approved.

The real essence of appellant's complaint is that he has not succeeded in bludgeoning approval, publication, sale, and practitioner-listing-for-book-promotion-purposes from appellees. It is implicit in what appellees have *not* done that they cannot conscientiously approve, publish, distribute or give authorship sanction to appellant's book as Christian Science literature. They have acted with such Christianly restraint that they have neither done or said anything which gave appellant basis for *any* essential allegation of a conspiracy claim. He launches merely an "informed and belief" claim.

Appellees have obviously left the author, and his book, to stand on whatever literary or other merit either can demonstrate. Appellant is not satisfied. His unique idea would destroy all publishers and fragmentize every religious group into schismatic parts. He argues that Sherman Anti-Trust laws force publishers (and even church publishing houses) to approve, publish and sell whatever an ambitious author offers to them. This is *reductio ad absurdum*. It is not law—Sherman Anti-Trust law or other.

The Third Count Fails to State an Actionable Claim.

Appellant seems to argue in his Opening Brief (pp. 31-36)—yet, his complaint is innocent of it—that he and the appellees are *competitors* in the business of publishing and selling authorized and approved religious literature and books about Christian Science, and that appellees have unreasonably restricted appellant's freedom of competition, which affects interstate commerce, by shutting off certain desired channels to market his book; that branch church Reading Rooms and other book dealers, who sell and exhibit appellees literature, have been coerced by appellees' threats to withdraw distribution of their own religious literature if they handle appellant's book.

Appellant argues that he can *make himself* an authorized and church-approved author and publisher of Christian Science literature simply by writing a book. He wants more than freedom to speak and write for himself. He must be given official approval and become a competitor in production and sale of what only appellees may give official sanction. Appellant's theory is but a different way of saying that he wants *his* book *associated* with appellees' religious literature so as to gain the impression of implied approval by appellees—all to his pecuniary profit.

We fully agree that appellant is free to write and sell *his concept* of Christian Science doctrine and teachings in the "open market of ideas," but appellees are free to disassociate their religious literature from appellant's literature. Appellees are not obliged to *aid* him or *assist* him by permitting *association* of their literature with his!

Appellant's "information and belief" allegations, about not exhibiting or selling his book in Reading Rooms

(neither of which would or could be done in any event, for the book was neither published nor sold by the Publishing Society) adds nothing. It was no conspiracy. It was obedience to a Manual rule binding on the Reading Room of any branch church desiring to be recognized as a branch of The Mother Church.

Also, in paragraph VII (p. 30) we have another general "information and belief" allegation, which appellant did not and could not allege with any ultimate fact whatsoever. It is that the appellees "notified or informed" (*which* is it, and *how* done?) "book stores" not to handle appellant's book if they desired to sell "defendant's literature." Appellant argues that a religious organization, on such a general allegation (which appellant would not and could not allege as known fact or supported by ultimate fact of any sort), *violates* the antitrust laws should it determine by whom and in what association its literature should be sold. Since The Mother Church Manual is in the record, we quote again section 12 of Article VIII, binding on appellant and every other Mother Church member:

"Obnoxious Books. Sect. 12. A member of this Church shall not patronize a publishing house or bookstore that has for sale obnoxious books."

Would appellant argue that this by-law would make for violation of the antitrust laws when appellees obey it and refuse to deal with bookstores selling objectionable crime and sex literature, for example? This is not to thus characterize appellant's book, but, to show, preliminarily, the absurdity of arguing that religious authorities cannot protect their own religious literature from association with and thereby giving implied standing to what

may be deemed objectionable and incorrect presentations of the teachings of that same religion, at the risk of violation of the anti-trust laws.

Here is another Manual rule in Article VIII:

“No Incorrect Literature. Sect. 11. A member of this Church shall neither buy, sell, nor circulate Christian Science literature which is not correct in its statement of the divine Principle and rules and the demonstration of Christian Science. Also the spirit in which the writer has written his literature shall be definitely considered. His writings must show strict adherence to the Golden Rule, or his literature shall not be adjudged Christian Science. A departure from the spirit or letter of this By-Law involves schisms in our Church and the possible loss, for a time, of Christian Science.”

The rule shows the reason. And now we are told that appellees may not obey their ecclesiastical law to protect against “schisms in our Church” lest they violate the anti-trust laws. The above Manual sections, on the one hand, and appellant’s contention under the anti-trust laws, would put appellees in this horrible dilemma: Either violate your Church Manual, or be guilty of violating anti-trust laws!

There is no factual or legal basis for this wholly irrelevant discussion of Title 15 of the United States Code. Appellant has no cause of action to state, and certainly has stated no cause, under Title 15.

By no stretch of even appellant’s imagination is this anti-trust matter. But even in wholly different situations

where that law *is* involved, an action based on the federal anti-trust laws must show certain things:

“The complaint or statement must sufficiently allege (1) that defendant has done one or more of the things forbidden by the statute; (2) that transactions involved interstate commerce, and (3) were intended to, or had a necessary tendency to, or did impede, stifle, or hamper such commerce, and (4) otherwise prejudicially affected the public in the manner required to constitute the particular violation charged; (5) that plaintiff has suffered injury in his business or property different from that suffered by the general public; (6) and the nature and extent or amount of the injury sustained.” (58 C. J. S. 1123, Monopolies, Sec. 100b.)

The preparation of the proper pleading for federal anti-trust suits requires a statement of matters and their relation to each other far more extensive than that in a simple pleading in negligence tort or on contract. A complaint to state a cause of action must show not only damages sustained by the individual plaintiff, but also a violation of public rights prohibited by the Act. (*Bader v. Zurich Gen. Acc. & L. Ins. Co.* (D. C. N. Y., 1952), 12 F. R. D. 437; *Beegle v. Thompson* (7 Cir.), 138 F. 2d 875; *United States v. Schine Chain Theatres* (D. C.), 31 Fed. Supp. 270; *Emich Mtrs. Corp. v. Gen. Mtrs. Corp.* (7 Cir., 1950), 181 F. 2d 70, 75.)

“Broadly stated, the purpose of the Sherman Anti-Trust Act (and supplemented by the Clayton Act) is the preservation of a system of free competitive, economic enterprise and the protection of the public against the evils incident to monopolies

and contracts or combinations tending directly toward unreasonable suppression or restraints of *interstate trade or commerce*.” (58 C. J. S. 972, Monopolies, Sec. 18a.)

Justice Stone in the landmark case of *Apex Hosiery Co. v. Leader* (1940), 60 S. Ct. 982, 310 U. S. 469, 84 L. Ed. 1311, reviews the history, purpose and construction of the Sherman Act.

What Is an Anti-Trust Case?

The *Apex Hosiery* case brings out the following points—each fatal to the appellant’s new-found theory of restraint of trade to support his Third Count:

1. There must be “some form of restraint upon *commercial competition* in the marketing of goods or services.” It is plaintiff’s *sine qua non*.

2. Restraint upon commercial competition is not illegal *per se*. The “rule of reason” doctrine must be satisfied, and

(a) such restraint must be *substantial*,

(b) such restraint must be “undue or unreasonable,”

(c) such restraints have been generally condemned only when the purpose or effect was to raise or fix the market price.

3. Principal purpose of anti-trust laws is to protect the *public*, and suit by individuals may be maintained only if the restraint prejudicially affects the public.

4. The federal anti-trust laws are applicable only to unlawful restraints upon or affecting *trade or commerce of an interstate or foreign character*.

There Is No Commercial Competition Involved.

This Court realizes that appellees are not in any way in competition with appellant or his book. Appellant has written *his* concept of Christian Science. *This* he is entitled to do. He is *not* entitled to force appellees to advertise him or his book, to give implied approval to it, or to turn the *Journal*-listing of practitioners engaged in healing by prayer, into the extraneous and commercial purpose of procuring acceptance and sale of a book. Appellant may sell *his* concept or version. He cannot force appellees to abdicate their responsibility as to what shall be deemed or authorized or approved statement of Christian Science, so that appellant may *then* argue *his* version to be authorized or approved. This is a new system for *creating* competitive business status in purely religious publications.

Appellant's concepts, with and without the operation of religious bodies, is unique indeed! Think of the many zealous authors whose writings have not had acceptance, with no less assurance than appellant of what their writings could do, if accepted. They could force others in official position (by threats of anti-trust litigation) to give them "status and position" upon which their "books' acceptance" depends. Many a struggling author might thus have money success—at the expense of others and their most cherished religious and other purposes!

Actually, none of appellees is engaged in commerce in any profit-motive trading sense. The First Church of Christ, Scientist, in Boston, Massachusetts, is the name of the congregation or members of an unincorporated Massachusetts religious society. Its governing officers are also named defendants in this lawsuit by their desig-

nation of "The Christian Science Board of Directors." The Christian Science Publishing Society is named a party defendant, but that is only a name under which the allied publishing and evangelical activities of said Church are carried on as a religious trusteeship—a trusteeship established by a deed of trust which is separate and distinct from the Church founding deed of trust.

These are the named conspirator-parties. The sole purpose and function of each is religious. They are directors of and publishers solely for religious purposes. None is engaged in trade or commerce in the commercial sense of the anti-trust laws. The "Father's 'business'" in evangelical pursuits, is not commercial.

Appellant argues that even purely evangelical activities are within the meaning of "commerce" as used in the federal anti-trust laws. Not even organized baseball is considered "commerce" within such statute. (*Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* (1922), 42 S. Ct. 465, 259 U. S. 200, 66 L. Ed. 898; *Toolson v. New York Yankees* (1953), 74 S. Ct. 78, 346 U. S. 356, 98 L. Ed. 20.)

Since the First Amendment to the United States Constitution protects the evangelical door-to-door activities of a colporteur from regulation by city license (*Murdock v. Pennsylvania* (1943), 63 S. Ct. 870, 319 U. S. 105, 87 L. Ed. 1292), the same Amendment is applicable to protect religious evangelism from regulation by Congress under the anti-trust laws. Sale of religious literature through Reading Rooms of branch churches or book-stores is an evangelical activity just the same as sale of religious tracts by colportage.

Analysis of appellant's contention that he is a commercial *competitor* of the appellees in the evangelical distribution of religious literature or books, illustrates the absurdity of his after-the-complaint theory to sustain the Third Count of his Second Amended Complaint. If appellant is willing to consider healing ministry as a mere business in the commercial sense, appellees cannot be legally forced to join him in that view, or become a commercial competitor of his.

Sale and distribution of religious literature for an evangelical purpose is but one form of exercising religious practice, and is guaranteed by the First Amendment. There may be "competition" between or among religious faiths in the advancement of their cause, but such "competition" is protected and guaranteed by the First Amendment. There may even be competitive presentation between an ecclesiastically-approved presentation and that which is unauthorized. This is *one* thing. It is not within the meaning of "commercial competition" as used in our anti-trust laws. It is quite another thing to ask Court assistance to *force ecclesiastical approval* of unauthorized writings, and thus *create* competitively "authorized" religious publications. Such an absurdity would not even create competitive commerce in the anti-trust sense.

Freedom of religion certainly includes the right to officially safeguard against implied or indirect approval of writings which do not constitute a part of a religious group's doctrine or teachings. One who seeks and fails to secure official approval of his religious writings cannot make those who deny such official approval commercial competitors committing conspiracy in restraint of trade. Appellant would have the freedom to evangelize (through

colporteurs or reading rooms) destroyed by application of the commerce clause to religion as a new type or trade or business.

There Is No Interstate Commerce, No Public Interest nor Unreasonable Restraint Involved.

Before federal anti-trust laws come into play, it is fundamental that the subject of restraint must necessarily affect *interstate* or *foreign* commerce. "The effect upon interstate commerce must be direct and not be remote and must be the result of an intent to restrain interstate commerce, or there must be a substantial and actual restraint of interstate commerce." (*Abouaf v. J. D. & A. B. Spreckles*, 1939, D. C. N. D. Cal., 26 Fed. Supp. 830, 833; *Holland v. Majestic Radio & Television Corp.*, 1939 D. C., S. D. N. Y., 27 Fed. Supp. 990.)

Plaintiff-appellant's pleading fails in any manner to set out the effect of the alleged conspiracy upon interstate or foreign commerce. In the first place, there was no "commerce" involved; and secondly, no "interstate" or "foreign" character to any supposed commerce.

Closely related to the fundamental point that federal anti-trust laws are designed to free interstate or foreign commerce from undue restraint, is the important point that the alleged conspiracy or wrong must prejudicially *affect the public*. The main object of federal anti-trust laws is to protect the public, and personal right of private suit is only incidental and subordinate to the element of prejudice to the public. (*Abouaf v. J. D. & A. B. Spreckles*, *supra*; *Arthur v. Kraft-Phenix Cheese Corp.*, 1937 D. C. Md., 26 Fed. Supp. 824.)

Plaintiff-appellant's pleading is totally devoid of any public interest. His complaint solely concerns an alleged wrong to him personally.

Another fatal point to appellant's federal anti-trust argument is the failure to indicate in his pleading any "undue" or "*unreasonable*" restraint upon interstate or foreign trade. *Standard Oil Co. v. United States*, 1910, 31 S. Ct. 502, 221 U. S. 1, 55 L. Ed. 619, pointed out that federal anti-trust laws only prohibit *undue* or *unreasonable* restraints. The fundamental test of "reasonableness" is its effect upon the public, *i.e.*, is it a detriment to the public. (58 C. J. S. 990, Monopolies, Sec. 23.)

Appellant's pleading is completely innocent of any alleged federal anti-trust wrong. But, even his argument omits the essentials of an anti-trust case. He complains simply because appellees will not *help him* to sell his book. He says that appellees (1) will not accept and examine my book or manuscript, (2) will not publish a review of it, (3) will not advertise it, (4) will not publish it and circulate it through branch church Reading Rooms, (5) will not let it be sold in association with official Christian Science publications, and (6) will not put his name back in the *Journal*-listing as qualified to practice Christian Science healing so as to give implied approval of said book and push its sale. Can appellant possibly argue that such alleged wrongful conduct is a "detriment to the public" and thereby an *undue* or *unreasonable* restraint upon interstate commerce!

We apologize (and perhaps appellant should) for taking this Court into a dissertation on a subject so wholly unrelated as anti-trust laws to appellant's disappointed hopes as an author seeking by devious means "status

and position” for his “book’s acceptance by the public.” However, the subject has been raised as a serious argument before this Court, and we have felt bound to deal with it.

Conclusion.

This effort to put the federal courts into the business of running the internal, ecclesiastical affairs of religious organizations, and to promote sale of appellant’s book should, we submit, be ended by:

Order dismissing the appeal for lack of federal jurisdiction, for clearly no such jurisdiction appears; or in the alternative, affirm the judgment of the Court below

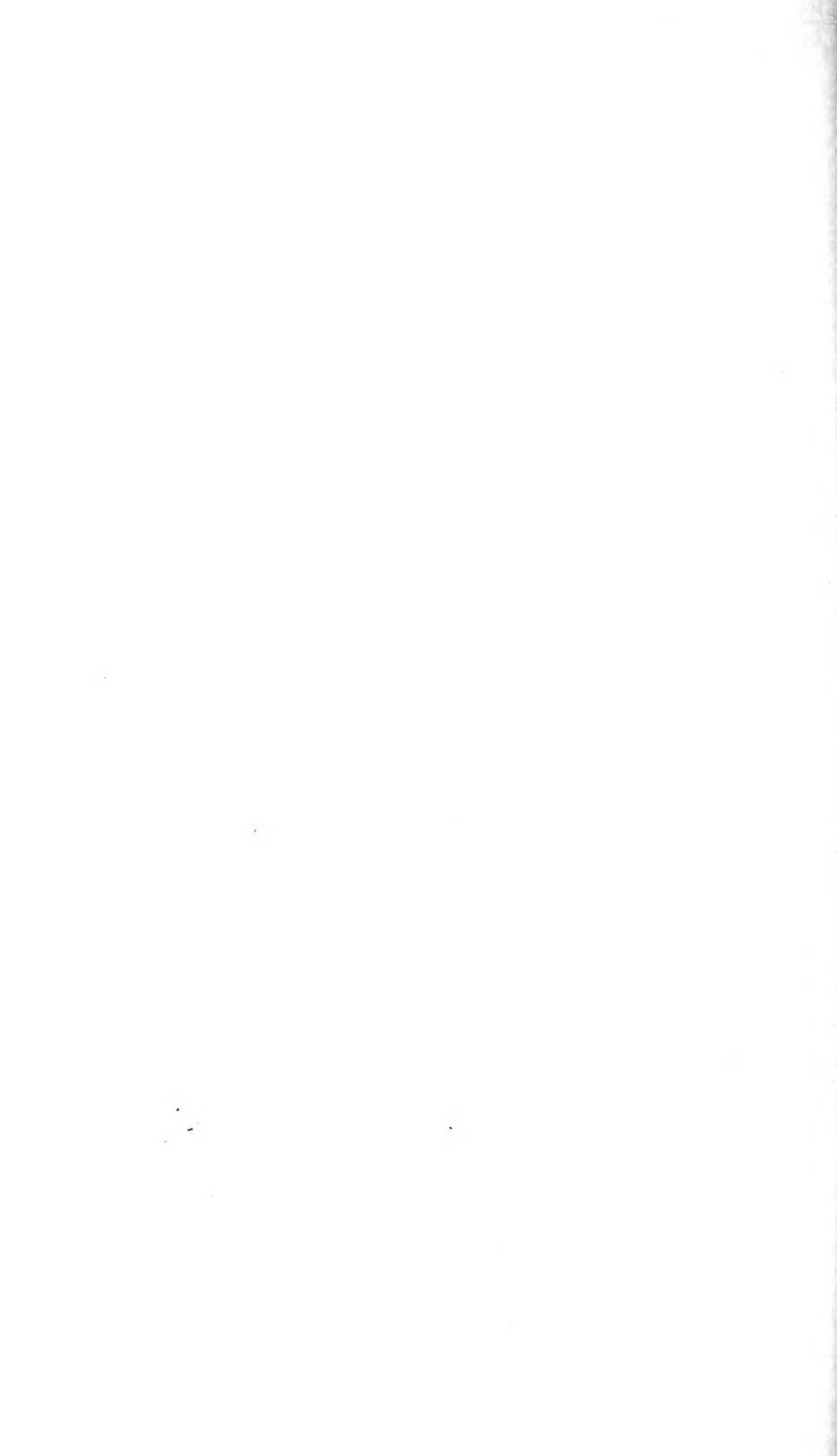
- (1) Dismissing the first and second alleged counts of plaintiff-appellant’s second amended complaint for failure to state a claim; and
- (2) Dismissing the third count of said second amended complaint (on motion therefor, treated as a motion for summary judgment) on the ground that there is no genuine legal issue as to any material facts, and with prejudice to commencement of another action thereon.

Respectfully submitted,

LINDSTROM & BARTLETT,

By RALPH G. LINDSTROM,

Attorneys for Appellees.



No. 14195.

IN THE

United States Court of Appeals
FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2D,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, etc., *et al.*,

Appellees.

APPELLANT'S REPLY BRIEF.

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PAUL P. O'BRIEN
CLERK



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Appellees.

APPELLANT'S REPLY BRIEF.

In response to the Appellees' Answering Brief, Appellant invites the Honorable United States Court of Appeals' attention to the following facts and law.

The District Court of Appeal Had Jurisdiction Herein.

Under Appellant's "Statement of Pleadings and Facts as to Jurisdiction," Appellant considered several matters including "(b) Jurisdiction of the District Court" (App. Op. Br. p. 4). Appellees contend that there is "no Federal jurisdiction" (Appellees' Ans. Br. p. 1). No law is cited to sustain their position, although reference is made to a collateral motion to dismiss the appeal to which a memorandum of law is annexed.

It is respectfully submitted that the Appellees do not challenge the jurisdiction of this Honorable Court, since Appellant's contentions in regard thereof (App. Op. Br. p. 7) are unanswered in Appelles' Answering Brief. The contentions of the Appellees in regard to said motion, are the same contentions made by them before the Trial Court [Tr. of Rec. pp. 36-39]. These contentions were considered by the Trial Court and overruled by it upon the affidavits filed.

The basic contention of Appellees is that they are not corporations, and therefore, not "citizens" of the Commonwealth of Massachusetts.

The case of *Puerto Rico v. Russell & Co.* (1933), 288 U. S. 476, 77 L. Ed. 903, is authority for the rule as to Federal jurisdiction, that if corporate functions and rights be given to an organization, and it be treated by the laws of its creation as a corporation, it is a juridical entity, having citizenship in the said state of its creation and invoking Federal jurisdiction, on the theory of diverse citizenship in any state wherein it is engaged in business. The United States Supreme Court in such decision, concluded at page 482:

"These characteristics under the Codes of Puerto Rico give content to their declaration that the sociedad is a juridical person. That personality is so complete in contemplation of the law of Puerto Rico that we see no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation organized under that law"

The Trial Court found that Appellees were each considered a "body corporate" under the laws of the Commonwealth of Massachusetts, wherein they were created

[Tr. on App. p. 82]. Its order denying a dismissal upon such ground was predicated thereon [Tr. on App. p. 105]. This Honorable Court's attention is invited to the fact that certain of the Appellees acknowledged such corporate status and qualified themselves as corporations to do business in the State of California. This was considered by the Trial Court as an admission by such Appellees "of their status as corporate entities of the State of Massachusetts" [Tr. of Rec. p. 82]. In the Commonwealth of Massachusetts, the recognition of the corporate existence of the Appellees has been presented in three cases.

In *Eustace v. Dickey* (1921), 240 Mass. 55, 132 N. E. 852, the Court held "it is unnecessary to determine in this connection whether the board of directors constitute a Board of Directors or not."

In the case of *Dittmore v. Dickey* (1924), 249 Mass. 95, 144 N. E. 517, the Court held:

"It is not necessary to decide whether the grantees in the deed of September 1, 1892, were capable, in view of all the facts, of taking and holding as a body corporate under the statute."

However in the third case, *Chase v. Dickey* (1912), 212 Mass. 555, 99 N. E. 410, involving the Appellees, the Court held at page 563 of the State Citation:

"The conclusion seems irresistible . . . that the plaintiff as a *body corporate* under R. L. C. 378 when objection is made by the Commonwealth are restrained from taking and holding the property described in the bill by reason of Section 9." (Emphasis ours.)

The other Appellee, if its status be not governed by Chapter 68 of the Annotated Laws of Massachusetts as

the trustees of the religious society and Church, are governed by Chapter 182 of the Annotated Laws of Massachusetts, dealing with that relationship commonly designated a "Massachusetts Trust."

The determination of the Trial Court as to the juridical entities of the Appellees, pursuant to the aforesaid chapters of the Annotated Laws of Massachusetts, stands unchallenged by said Appellees. They have not appealed therefrom. The allegations of the Second Amended Complaint that they are juridical entities recognized as a body corporate under the laws of the Commonwealth of Massachusetts, stands undenied and unchallenged. Predicated upon said premise as to their recognition as a juridical entity under the laws of the Commonwealth of Massachusetts, it is respectfully submitted that the law cited by Appellant in his Opening Brief, as to the jurisdiction of the District Court, is both proper and adequate for the purposes of this appeal.

Facts From the Record.

Appellant, in his Opening Brief, has divided the allegations of his Second Amended Complaint into those, concerning the jurisdiction of the District Court, which are summarized and set forth under the "Statement of Pleadings and Facts as to Jurisdiction" (Op. Br. p. 2), and the substance of his respective claims found at the preliminary part of each of his arguments as to his respective three counts (Op. Br. pp. 10, 21 and 54). Although not contending contrary and therefore conceding that

Appellant's statement of the pleadings is accurate and correct, Appellees, in a narrative form, set forth their conclusions as to the pleadings, alleging that it is their purpose to "avoid formalistic language of the pleadings," and to state "the facts shown by the record 'in everyday' terms." It is hard to conceive of any forum wherein formalistic language is more appropriate, particularly when applied to pleadings, than in the United States Court of Appeals. The attempt to state the facts in "every day terms," possibly appropriate in discussions with non-legally trained minds, finds no function or purpose when utilized in a formal legal appeal to a court of the status of this Honorable Court. The fallacy of this type of a statement of "facts from the record" is that it ultimately consists of the conclusions of the narrator and not a résumé of the ultimate facts set forth in the pleadings. It therefore loses all meaning or purpose when attempted to be used by legally trained minds in analyzing the sufficiency of the pleadings. Its apparent purposes and ultimate function was to be the basis of the "Preliminary Observations" found under Appellees' Answering Brief as the succeeding topic.

Appellees' Preliminary Observations.

Although not a usual or ordained part of a brief, the Appellees include in their Answering Brief, their "Preliminary Observations of Relief Sought" (p. 6). This also is in narrative form, wherein they interpret in scenario fashion, Appellant's actions as an attempt to "bludgeon" their ecclesiastical bodies (p. 7), and to superimpose his

alleged ideas and judgment for those of the Appellees (p. 9).

The primary fallacies of the Appellees' narrative lie both in their premise that legalistic language, thought or presentation of issues, are inappropriate herein, and more germanely by their avoidance of technical pleadings, they have united all of Appellant's three causes of action into one narrative and thereby seek to eliminate germane and material issues, legalistically presented by technical pleadings. This illogical approach to the problem, requires that the response thereto be based more upon logic than authority and more upon reason than upon precedence. This situation was not of Appellant's creation, but one in which he finds himself by reason of the presentation of Appellees' Answering Brief. The response thereto will seek to logically indicate the separate claims presented in Appellant's Second Amended Complaint, and the different relief sought in each of the counts thereof. This distinction was recognized by the Trial Court which rendered a different form of ruling as to the first and second counts, and as to the third count of Appellant's Second Amended Complaint [Tr. of Rec. pp. 105-111]. As to the first two counts, a motion to dismiss was granted; as to the third count, a summary judgment was ordered.

ARGUMENT.

I.

That Appellant's Second Amended Complaint States Three Distinct Causes of Action.

As indicated in Appellant's Opening Brief, the first and second counts of his Second Amended Complaint are predicated upon the same factual situation (pp. 21, 24). Basically they concern the right of Appellant to have his name reinserted in the Christian Science Journal, as an approved and recognized Christian Science Practitioner. The first cause of action dealt with Appellant's status, reputation and position as a Christian Science Practitioner and a Christian Scientist, and the damages resulting therefrom. The second cause of action dealt with his loss of income by reason of his inability to pursue his professional calling as a Christian Science Practitioner (App. Op. Br. p. 21). The third cause of action concerns itself with a book written by Appellant during the period of his sabbatical leave. Although it alleges his efforts to obtain the correction, is necessary, and approval of the Appellees, which was ignored by them, it basically alleges their affirmative action in preventing book stores and vendors of literature in general, from handling Appellant's said book, upon the penalty that if they did so, they would not be allowed to handle Appellees' reading matter, which was requisite to the maintenance of their business establishments (App. Op. Br. p. 25). The two causes of action are not dependent and had Appellees, through their organization, disbursed Appellant's book,

he still would have brought his first and second causes of action if they had failed to reinsert his name in their professional listing, and had they done this promptly, he still would have brought his third cause of action if they pursued their course of conduct to hinder and delay the sale of his book by their course of intimidation.

The alleged ecclesiastical approach of the problem, wherein certain of the elements of each of the causes of action are attempted to be co-related and joined, and the conclusion drawn therefrom that the acceptance of Appellant's book and the reinsertion of his name in the professional listing, were co-dependent and co-related, is illogical, unrealistic and unfounded. Appellant finds himself in the same position as the Trial Court, who, seeking to fathom the situation herein in the light of the responses of the Appellees, concluded, "we question the sufficiency of this reply in a legal sense" [Tr. of Rec. p. 84].

II.

Appellant Stated a Claim for Relief in Both the First and Second Counts of the Second Amended Complaint.

The basic wrong complained of by Appellant in his first and second counts of the Second Amended Complaint was predicated upon the following premise:

(1) That Appellant had educationally and spiritually prepared himself for the professional calling of a Christian Science Practitioner;

(2) That he had been accepted, approved and recognized by the continued reinsertion of his name in the professional listing thereof, found in the Christian Science Journal;

(3) That he had voluntarily removed his name in accordance with usage and custom for a sabbatical period, and had, at the conclusion thereof, requested the reinsertion of his name and tendered the required fees therefor;

(4) That although it was a long established custom and practice of the Appellees, under such circumstances to reinsert such name, they failed to do so without any just cause or provocation;

(5) That although a disciplinary procedure existed under Church By-laws, if it was in any manner contended that Appellant's conduct was reprehensible, such procedure had not been applied, and Appellant had not been deprived of his rights as a Christian Science Practitioner by any Church recognized procedure.

The basic contentions of the Appellees in this regard are stated in their Answering Brief, as follows:

“ . . . Failure to reinsert such listing is asserted to be a deprivation, *not* of the *right* to practice, but simply of *approval* of his *status* as a Christian Science Practitioner; . . .

Whether any man is at any given time to be officially listed as qualified to practice and teach Christian Science, or any other religious faith, is an internal ecclesiastical matter. No civil court is equipped to review or make such determination for any religious body. . . .” (Pp. 10, 11.)

Continuing, the Appellees restate their contention in their Answering Brief:

“Although appellant would characterize a practitioner's calling as a mere ‘property right,’ instead of a ministry of healing through prayer (a view, the very statement of which is shocking), the determina-

tion of whether appellees shall (by accepting his listing in the Journal) impliedly approve his educational, spiritual and moral qualifications to publicly practice Christian Science healing is, we repeat, solely a matter within the religious body. Appellant would have this Court sit on a question of spiritual fitness to be a practitioner; he asks that appellees be required to give their implied endorsement consequent on advertising appellant in the Journal . . .” (P. 12.)

This clearly indicates the variance in the contentions of the Appellant and the Appellees. Summarized, they are: Appellant states *“I having been approved educationally, spiritually and morally to practice the professional calling of a Christian Science Practitioner and not having been deprived of such right by the procedure provided in the Manual (By-laws), cannot be deprived of such right by a non-adherence to a long established practice of reinserting my name in the Journal after a voluntary withdrawal.”* The Appellees contend that without adherence to Church procedure, and without the bringing of any charges or affording Appellant an opportunity to be heard and make a defense, they may re-evaluate his educations, spiritual and moral qualifications to publicly practice as a Christian Science Practitioner, and deprive him of such right by withholding the publication of his name in the Christian Science Journal. Upon the correctness of either contention, lies the solution of the query, does Appellant’s first and second counts of the Second Amended Complaint, state a claim for relief?

Although ignored by the Appellees, the publication of a practitioner’s name in the Journal constitutes more than an advertisement. As alleged in the said Second Amended Complaint, only Christian Science Practitioners who are

listed in the Christian Science Journal enjoy the following rights and privileges:

(1) Recognition to act before various administrators, bureaus or officials of the Federal, State or Municipal Governments;

(2) Recognition and acceptance as expert witnesses by Federal, State or Municipal courts;

(3) Protection by law from divulging information received in a professional capacity;

(4) Acceptance as an expert and recognition of professional standing by public institutions, schools, hospitals or welfare institutions;

(5) Acceptance by the branch Christian Science Churches for the performance of functions or the making of certificates usually done or required to be done by a Christian Science Practitioner [Tr. on App. p. 23].

(6) Obtain the services of a Christian Science nurse for his patients;

(7) Ability to place or attend his patients in Christian Science institutions;

(8) Share an office or practice with an approved Christian Science Practitioner, who was listed in such Journal [Tr. on Appeal p. 24].

The contention of Appellees that California cases are inapplicable to the within situation, is met by an examination of the facts and law of such cases and their application in principle of the situation herein. If it be considered that Appellant is following a profession, the cases as to the right to continue to follow such profession in the absence of disbarment or disfranchisement by legal means, is well established (App. Op. Br. p. 14). If it be held that the same is "a ministry of healing through prayer"

(Appellees' Ans. Br. p. 12), then the rule established by *Providence Baptist Church v. Superior Court* (1952), 40 Cal. 2d 55, 251 P. 2d 10, cited at length in Appellant's Opening Brief (p. 16), is directly applicable, since it involves the determination of the status of Appellant, and whether he is entitled to receive the rights, privileges and emoluments of the office for which he has been qualified. This, Supreme Court of California held, "presents a problem involving civil and property rights." More germane is the further holding of said Supreme Court, found at page 64 of the California Citation that civil courts may determine whether, in disfranchisement of a minister or other church dignitary, the rules of the Church have been followed, and "*if they have not, what will be the resulting effect on civil and property rights?*" (Emphasis ours.)

It is respectfully submitted that the Appellees concede that intentionally and deliberately, they disfranchised Appellant by excluding his name through the process of failing to comply with their long established policy to reinsert and republish in the Christian Science Journal, upon request, the name of a Christian Science Practitioner, voluntarily withdrawn therefrom, and that such disfranchisement was done without resorting to the procedure provided therefore by the Church Manual (By-Laws).

It is further respectfully submitted that so doing, they have deprived Appellant of certain rights and privileges, requisite to the resumption of his practice as a Christian Science Practitioner. In conclusion, it is respectfully submitted that his right to follow this professional calling, either as a property right, or if considered in the light of the emoluments of the office, constitutes a civil wrong and a claim recognizable under the law of the State of California.

III.

**That a Summary Judgment Was Improperly Granted
as to the Third Count of the Second Amended
Complaint.**

The latter half of Appellees' Answering Brief is devoted to the argument that the summary judgment was proper as to Appellant's third count of his Second Amended Complaint (pp. 16-33). Although basically the summary judgment concerns itself with the facts, since it is a judgment upon the merits, the argument of the Appellees deals principally with the pleading of such count. The argument of the Appellees is allegedly predicated upon the Church Manual, Appellees stating that "appellant himself pleaded this Manual to be the official By-Laws" (Appellees' Ans. Br. p. 16).

An examination of the pleading of Appellant indicates the limited purpose for which the Manual was plead, namely, to allege the existence of a disciplinary or expulsion procedure for those who misteach Christian Science [Tr. of Rec. pp. 15-16]. As alleged in said paragraph, Exhibit "A" annexed to said Second Amended Complaint, further so indicates and is limited to such procedure [Tr. on Appeal pp. 34-36].

It is basically the contention of Appellees that Appellant's book, "God on Main Street", is an "obnoxious" book and "an adulteration of Christian Science doctrine and teachings." Although such statements are prefaced or followed by the statement that the determination of such fact is immaterial to the issues (Appellees' Ans. Br. p. 19), logic would indicate that if the answer be in the negative, no complaint would be made by the Appellees and no punitive action would have been taken, as factually it was. The complained-of actions on the part of the

Appellees do not concern themselves only with the vending sources of literature under their control, but primarily with independent vendors of literature, who, as part of their vending commodities, disburse the literature of the Appellees. Appellees' intimidation of such independent vendors, requiring them to exclude Appellant's book, or to be deprived of Appellees' literature, is the gravamen of Appellant's third cause of action [Tr. of Rec. pp. 30-31]. The allegations as to the reading rooms and Church publications are indicative of the intent and purpose of the Appellees.

The allegations of the Second Amended Complaint as to the presentation of Appellant's book to Appellees, prior to its publication, is unjustifiably concluded by Appellees to be a promotional procedure in the dispensing of Appellant's book. Actually the same was a recognized and ordained practice, to prevent any objection after printing by correction of the same prior to printing, and to see that the same was in conformity with the exercise of the functions of the committee on publication of the Appellees. Section 2, Article XXXIII of the Manual (p. 97) defining the duties of the Committee on Publications, provides as follows:

“It shall be the duty of the Committee on Publication to correct in a Christian manner impositions on the public in regard to Christian Science, injustices done Mrs. Eddy or members of this church by the daily press, by periodicals or circulated literature of any sort. This Committee on Publication shall be responsible for correcting or having corrected a false newspaper article which has not been replied to by other Scientist, or which has been forwarded to this Committee for the purpose of having him reply to it. If the correction by the Committee on

Publication is not promptly published by the periodical in which it is desirable that this correction shall appear, this Committee shall immediately apply for aid to the Committee on Business. Furthermore, the Committee on Publication shall read the *last proof sheet* of such an article and see that it is published according to copy; he shall circulate in large quantities the papers containing such an article, sending a copy to the Clerk of the Church. It shall also be the duty of the Committee on Publication to have published each year in a leading Boston newspaper the letter sent to the Pastor Emeritus by the Church members in annual meeting assembled. The State Committees on Publication act under the direction of this Committee on Publication.”

The court’s attention is invited to the use of the term “proof sheet”, indicating the remedial desires of the scrivener and adoptors of this By-Law. Appellant was thus pursuing usual and ordained Church procedure in presenting his “copy and proofs” to the Appellees. The failure to comply therewith or to adhere to the Church Manual is attributable only to Appellees. Their now disclosed disapproval of his book, was not indicated to him for correction as required by the By-Law, but they sought, by unauthorized means, to handicap the same, by failure to act. He thereupon published his book and sought to disburse the same through independent vendors as well as Church vendors. Appellees of necessity, must concede his right as to independent vendors, but seek to prevent such sale when the same is sold in a store wherein their literature is disbursed, even if the same be an independent vendor. They allege their position in their Answering Brief (p. 23), as follows:

“We fully agree that appellant is free to write and sell *his concept* of Christian Science doctrine and

teachings in the ‘open market of ideas,’ but appellees are free to disassociate their religious literature from appellant’s literature. Appellees are not obliged to *aid* him or *assist* him by permitting *association* of their literature with his.”

“Without correction” as required by their By-Laws, and alleging that the “obnoxious” character of Appellant’s book is not an issue and its existence or non-existence is immaterial (Appellees’ Ans. Br. p. 19), Appellees justify their action as to the independant vendors on the theory that Appellant’s book is factually, but undeclaredly an “obnoxious” book (Appellees’ Ans. Br. p. 24). Had Appellees complied with the Manual, any alleged obnoxious portions or parts of said book, would have been corrected. The failure of correction was the result of the failure of Appellees to do so upon the request of Appellant.

The gravamen of Appellant’s third cause of action is thus admitted by the Appellees. It is apparent that they found objection in Appellant’s book and sought to hinder, delay or prevent its public sale on the “open market . . .” by contending that the same could not be sold “in *association*” with their literature, which, in its practical operation consisted of their mandate to independent vendors, not to sell Appellant’s book, or be deprived of Appellees’ literature.

All of the cases cited by Appellant deal with the pleading of the third cause of action, asserting that certain allegations are insufficiently alleged. Had the holding of the Trial Court been similar in regard to the third cause of action, as it had the first and second causes of action of the Second Amended Complaint, such law would have been proper and germane. The technical complaints as to pleading of the Appellees is not in conformity with

the theory of liberalized pleading, now pursued by our Federal Courts.

It is, however, the contention of Appellant, that by reason of the granting of a Summary Judgment as to the third cause of action, pleadings are germane only to the facts alleged by them, and not as to the technicalities of their allegations (See App. Op. Br. p. 38).

It is respectfully submitted that the aforesaid actions on the part of the Appellees, particularly in regard to independent vendors of literature, constitute illegal restraint of trade and is a violation of Title 15 of the United States Code Annotated, the pertinent sections of which and law applicable are set forth in Appellant's Opening Brief (p. 31).

It is further respectfully submitted that the affidavits filed herein can only be utilized for the purpose of ascertaining the issues of fact presented, but not to decide the facts (App. Op. Br. p. 29), and that upon the issues herein presented, as alleged in the Second Amended Complaint, and the concessions of the Appellees as to their actions and theories set forth in their Answering Brief, there has been an illegal restraint of trade, for which Appellant is entitled to redress. For the foregoing reasons, it is further respectfully submitted that the Summary Judgment in favor of the Appellees was improperly granted.

Conclusions.

It is respectfully submitted by Appellant, as follows:

1. That the Appellees and each of them are recognized and accepted as juridical entities under the laws of the Commonwealth of Massachusetts, the state of their creation;

2. That the Appellees have accepted respectively, the status of a “body corporate” under the laws of said Commonwealth and that two of the Appellees have qualified as corporations under the laws of the State of California;

3. That the holdings, findings and conclusions of the District Court that Appellees are juridical entities recognized as corporations of said Commonwealth, have not been challenged or appealed from;

4. That a juridical entity given and granted the function and rights of a corporation by the laws of the state of its origin, is a “citizen” for the purpose of diversity of citizenship to invoke Federal jurisdiction;

5. That the law cited in Appellant’s Opening Brief as to the jurisdiction of the District Court, is pertinent and controlling;

6. That the Motion to Dismiss of the Appellees should be denied;

In addition thereto, Appellant respectfully submits:

7. That under the laws of the State of California, being the forum in which the controversy arose, the attempted disfranchisement of appellant as a recognized, approved and accepted Christian Science Practitioner by Appellees, who refused to reinsert and republish his name in accordance with established customs, without the bringing of any charges or following the procedures for disfranchisement, provided for in the Church By-Laws, constitutes a civil wrong, recognizable by the courts of California and the Federal courts sitting within said state;

8. That the failure to republish and reinsert Appellant’s name in the Christian Science Journal, as an ap-

proved, recognized and accepted Christian Science Practitioner, prevented him from pursuing such functions and receiving certain recognitions by Federal, State and Municipal Courts officers and officials and by institutions, recognized practitioners and nurses of the Christian Science faith, which resulted in the loss of the emoluments, benefits and income from the practice as a Christian Science Practitioner, and also constitutes a property right, recognizable by the laws and court of California and the aforesaid Federal Courts;

9. That by reason of such non-republishing and the damages resulting therefrom as alleged in the first and second counts of the Second Amended Complaint, such counts, state respective claims upon which relief can be granted;

10. That the *Dismissal with Prejudice* by the Trial Court of said Counts one and two of said Second Amended Complaint, is improper and prejudicial;

11. That the Appellees, without directly declaring Appellant's book to be "obnoxious" to their creed, and by deliberately failing to correct the same in accordance with procedure set forth in their By-Laws, cannot act in a manner and under the premise that the same is obnoxious;

12. That the Appellees cannot legally prevent independent book sellers and stores from handling and disbursing Appellant's book upon the theory that the same is in "association" with their literature and threatening to withhold their literature from any independent vendor or bookstore handling Appellant's said book;

13. That said conduct on the part of Appellees constitutes a restraint of trade prohibited by law;

14. That the Summary Judgment granted by the Trial Court as to third cause of action of said Second Amended Complaint, is predicated not upon pleading, but upon facts, and that under the facts as established herein, and particularly as alleged in the complaint, Appellant is entitled to relief;

15. That the Summary Judgment granted by the Trial Court as to the third cause of action of said Second Amended Complaint is erroneous and improper.

In conclusion, Appellant respectfully submits that the Dismissal and Summary Judgment of the District Court should both be reversed.

Respectfully submitted,

EUGENE L. WOLVER,

Attorney for Appellant.

No. 14195.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2D.,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, etc., *et al.*,

Appellees.

PETITION FOR REHEARING.

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No. 14195.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ALEXANDER SWAN, 2d.,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON,
MASSACHUSETTS, etc., *et al.*,

Appellees.

PETITION FOR REHEARING.

The petition of the appellant, Alexander Swan, 2d, for a rehearing of the within cause, respectfully represents and shows:

Opinion.

The opinion of this Honorable Court was filed on the 30th day of August, 1955.

That the basic determinations thereof, are as follows:

1. That Federal jurisdiction exists, since the appellees are "*de jure*" corporations under the laws of the Commonwealth of Massachusetts;

2. That the first and second causes of action of the complaint fail to state an actionable claim in that it is not therein indicated that the refusal of the appellees to comply with the appellant's demand to reinsert his name as a practitioner in the list of the official publication of the appellee church, was not contrary to any contractual obligation and the same were properly dismissed *with prejudice*;

3. That the summary judgment as to the third cause of action of such complaint, that the same did not constitute any actionable claim, was properly granted by the trial court.

Subject Hereof.

The first contention of the court, namely, that jurisdiction exists, being requisite to the consideration hereof and favorable to appellant, no further discussion herein, thereof, will be had.

No request is herein made for a rehearing on the third subject of such opinion, namely, the court's summary judgment as to the third count of the appellant's second amended complaint.

The petition and request for rehearing is solely predicated upon, directly to, and concerns the second matter of the opinion, namely, the legal propriety of the dismissals *with prejudice*, as to the first two counts of said complaint.

ARGUMENT.

I.

That the First and Second Counts of Appellant's Second Amended Complaint Each State an Actionable Claim.

This Honorable Court, in its Opinion, summarizes and predicates such opinion upon the following résumé of the first and second causes of action of appellant's said complaint:

“ . . . His complaint is that although he had once been a Christian Science practitioner and had his name listed in the official publications of the Church, yet after he had withdrawn his name from the list and later requested that his name be reinstated as a practitioner defendant failed to accede to this request. It is not alleged that there was any contractual obligation which required defendants to do this, and the facts alleged fail to disclose that the refusal of the defendants to comply with appellant's demands constituted a breach of any other kind of duty or constituted a tort or other actionable wrong. . . . ”

This succinct statement of fact, although accurate in the limited segments of the factual situation of the within cause, contained therein, is neither accurate nor factual, in regard to the actual situation, the relationship between the litigants and the position of each litigant, as well as the spirit of such relationship and the purpose of the list herein involved. Had the list been a commercial list, used for advertising purposes by those who desired to subscribe to its services, and been published solely for such purpose, the premises of said factual statement contained in the Opinion of this Honorable Court, would have been

correct. But, such list had neither such purpose nor performed such function.

Appellee is a church advocating and adhering to certain metaphysical practices found in few, if any other, religious organizations. As indicated in the affidavit of appellant [Tr. of Rec. p. 59], which is uncontroverted, a definite and distinct program of training is prescribed for members of the appellee church seeking to qualify themselves as Christian Science practitioners. When qualified, such practitioner follows a professional calling and maintains an office by himself or together with other practitioners, paying the expenses thereof, including necessary telephone services, professional cards and professional services. The furniture in such office also belongs to the practitioner, as do the other prerequisites thereof. Such practitioner attends the needs of his patients by rendering to them metaphysical assistance and the obtaining of such patients is purely a matter of his personal contact or by reference from some other patient or friend. No person is sent to him as the result of any church procedure, and the goodwill and integrity of each practitioner are the controlling situations that cause patients to seek his assistance. Essentially, he is akin to the ordinary medical practitioner, known and used by all persons, other than those of this specific faith.

While it has been contended that any person may practice metaphysical healing, the allegations of the complaint herein, which upon a motion to dismiss, must be deemed as true, indicate that the list herein referred to is the list that indicates the acceptance, approval, authorization and registration of a practitioner by the appellee church [Tr. of Rec. p. 14]. It is akin to the licensing of a physician and surgeon by the state and the placing of his name upon the official registry of such state, as an active licensed

physician and surgeon therein. Recognition of the status of such practitioner is further indicated by a procedure, being set forth in the Church Manual and By-laws for his removal, in the event of misfeasance or nonfeasance [Tr. of Rec. p. 34]. The rights, privileges and license afforded Christian Science practitioners whose names are listed in the Christian Science Journal, are set forth at length in the complaint and are recognized by state and federal authorities, when so listed [Tr. of Rec. p. 23].

Appellant pursued the requisite courses of dedication and education, and upon completion, was qualified as an approved, authorized and registered practitioner by appellee church, since the 15th day of September, 1934. His name was thereafter published in such list without interruption until the 17th day of October, 1949, when it was removed, pursuant to his request of the 12th day of September, 1949, that such name be temporarily removed in order that he might pursue and engage in further study and research in the field of Christian Science [Tr. of Rec. p. 19]. This was in conformity with the Church Manual and By-laws, requiring the devoting of substantially all of the practitioner's time to the practice of Christian Science [Tr. of Rec. p. 15]. A year and one-half later, on or about the 10th day of May, 1951, he made written application to appellees for the resumption of the publication and reinsertion of his name in the official recognized list of Christian Science Practitioners. The refusal and failure of the appellees to comply with this request is the basis of the actionable claim of the first and second counts of appellant's second amended complaint. As set forth in the complaint, the procedure herein followed, was the approved and accepted procedure of Christian Science practitioners, who, for various reasons, were

unable to devote themselves to the profession of a Christian Science practitioner, for given periods of time. It was the established practice of the appellees where there had been a voluntary request to withdraw the name from such list, to reinsert the name of the practitioner upon his subsequent request to do so [Tr. of Rec. p. 22]. While no written contract between any given Christian Science practitioner and the appellee church exists, requiring the appellee church to do so, this was the established method and custom, long followed by the appellees.

No church, or other procedure, has either been filed or pursued by any of the appellees to remove appellant or his name as a Christian Science practitioner, under any church procedure authorized by the "Manual or By-laws" of the appellees or by any other form of judicial proceeding.

It was the theory and purpose of the first and second causes of action of appellant's present complaint, to indicate his qualification, acceptance and recognition by appellees in the profession of a Christian Science practitioner, and that the right to follow such profession, was a *property right* recognized by the laws of the state of California (App. Op. Br. p. 14). That since the same was a "property right," he could not be deprived thereof, except by the church procedure and rules adopted for such purpose, and that the courts, both of the State of California, and the Federal Courts sitting within such state, would determine "if any church tribunal had properly or finally acted and if so, whether the rules of said church had been followed, and if not, what will be the resulting effect on civil and property rights" (App. Op. Br. p. 16).

Bouldin v. Alexander (1872), 82 U. S. 131, 139,
21 L. Ed. 69.

If the appellees may ignore their established practice and custom of allowing a Christian Science practitioner to voluntarily withdraw his name from publication and thereafter having the same reinserted upon demand, in the absence of adherence to a disfranchisement by the established church method therefore, appellees could, at any time, withdraw from any practitioner, his recognition and authorization, by declining to publish his name in any subsequent edition of the list of Christian Science practitioners. If the right to practice Christian Science, be not a property right that would be thereby violated, such procedure could be followed. *But* if the same be a *property right*, such procedure could not be pursued, nor would the indirect procedure herein, be sanctioned.

Berrien v. Pollitzer (1947), 165 F. 2d 21, 23.

In the recent case of *Keeler v. Schulte* (1953), 119 Cal. App. 2d 132, 259 P. 2d 37, the state court held at page 136 of the state citation, "it is fundamental that under the Constitution of the United States (Amendment No. 14), no one shall be deprived of property without 'due process of law'." This case and other cases so holding, are referred to in Appellant's Opening Brief, pages 16, 17 and 18.

It is respectfully submitted that upon the theory that the right to practice Christian Science as a profession after the initial acceptance and recognition by the appellee church, is a "property right" for which a person may not thereafter be deprived by the appellee church, except through proceedings before such an appellee church, in compliance with the procedure established therefore, in the "Manual and By-laws" of such appellee church.

Although there does not appear to be any specific case heretofore decided between a Christian Science practi-

tioner and any of the appellees, upon such subject matter, the same is akin to any other form of professional recognition membership privileges or licensing by any state or other governmental agency, wherein an established procedure is set forth for the disfranchisement of the licensee or member. None of such licensees have any contract with the licensor, be it government, bureau, agency or non-profit corporation, requiring such licensor to continue the recognition or licensing of such party in the absence of established procedure to deprive a party of his rights therein. All of such licensing, permit a person to place themselves in an inactive status and to be reestablished upon request, in an active status. While a form of requalification might be required as a requisite thereto, the same is generally not so required and when existing, is set forth in the rules and by-laws, of the organization. Appellees have no such procedure, and such requalification was not required of any of the other practitioners who had theretofore withdrawn their name from the publication, and upon their request, had the same reinserted and their privileges reestablished. If any contractual obligation be deemed requisite to such procedure, the long established practice of appellees as to the reinsertion of names of Christian Science practitioners, after voluntary withdrawals thereof, from the published lists, would indicate an implied contractual obligation, requiring the appellees to afford the same right and privilege to the appellant that it had theretofore afforded to other practitioners.

American Jurisprudence and sense of justice requires that appellant be treated by appellees, in the same manner as other Christian Science practitioners. If appellees desire to do otherwise, proper procedure should have been brought by them to remove appellant, as a Christian Science practitioner.

II.

That a Civil Right of a Pecuniary Nature, Is a Property Right That Will Be Protected by the Courts:

As hereinbefore indicated, appellant acquired the civil right to have himself recognized, accepted and acknowledged as a Christian Science Practitioner by the appellees. The placing of his name in the recognized list indicating such acceptance, gave to him specific rights, which rights are set forth in his Second Amended Complaint [Tr. of Rec. p. 24], and are summarized in Appellants' Reply Brief (p. 11). Such rights afforded to him certain recognitions, certain acceptances and certain abilities to obtain for his patients, specialized services, not otherwise available. All of the same not only make such recognitions essential, but make the same requisite to the successful economic practice of the profession of a Christian Science Practitioner. The enjoyment of a *property right* has long been protected by the courts of the State of California, which have not permitted the same to be terminated arbitrarily or capriciously, without just cause and a hearing wherein the party to be deprived of such right, has been afforded an opportunity to be heard.

Grand Grove A. O. D. v. Duchein (1895), 105 Cal. 219, 222;

Ellis v. American Federation of Labor (1941), 48 Cal. App. 2d 440, 445;

Taboada v. Sociedad Espanola, etc. (1923), 191 Cal. 187, 191;

4 Am. Jur., 466, 469, 471;

7 C. J. S., 62.

The courts have held that it is clearly within their power to protect such rights.

Von Arx v. San Francisco Gruetli Verein (1896),
113 Cal. 377, 379;

Horgan v. Metropolitan Mutual Aid Ass'n, 202
Mass. 524, 88 N. E. 890; 27 A. L. R. 1512.

A discussion of the many kinds of rights which have been classified as property rights is unnecessary, but it is important to note that basically and traditionally a property right is one which has a pecuniary value.

In the case of *International News Service v. Associated Press* (1919), 248 U. S. 215, 63 L. Ed. 211, 219, 39 S. Ct. 68, the Supreme Court of the United States has stated:

"The rule that a court of equity concerns itself only in the protection of property rights treats any civil right of a pecuniary nature as a property right."
(Emphasis ours.)

To the same effect are:

Fisher v. Star Company, 231 N. Y. 414, 132 N. E.
133;

28 Am. Jur., Sec. 70, p. 264.

The particular kind of organization with which a person was associated has never been a material consideration where there was a deprivation of property without a hearing and without just cause being shown. The courts have prevented the expulsion of members without a hearing from non-profit corporations (*Moustakis v. Hellenic Orthodox Society*, 159 N. E. 453), from benevolent societies and unincorporated associations (*Grand Grove A.O.D. v. Duchein* (1894), 105 Cal. 219; *Knights of*

Klu Klux Klan v. Francis (1926), 79 Cal. App. 383), and from labor unions (*Ellis v. American Federation of Labor* (1941), 48 Cal. App. 2d 440; *Smeterham v. Laundry Workers Union* (1941), 44 Cal. App. 2d 131.) It is a financial interest which is protected, whether it be an undivided ownership of the property of an association, insurance benefits connected with a benevolent society, or the right to earn a living where union membership is necessary.

Just as recognition in an appropriate manner as a union member is necessary for such member to follow his vocation and earn a livelihood, so is the recognition by publication in the official list of practitioners, requisite to the successful economic practice of such profession. The personal right to practice a profession essentially includes the right to obtain the most available and advantageous compensation therefrom.

Modern authorities, including California, hold that equity in proper instances will also protect personal rights.

Orloff v. Los Angeles Turf Club (1947), 30 Cal. 2d 110, 113;

Berrien v. Pollitzer (1947), 165 F. 2d 21, 23; 175 A. L. R. 438 *et seq.*

It is well settled in this State that an organization in expelling one of its members, acts in a quasi-judicial capacity.

Otto v. Tailors' P. & B. Union (1888), 75 Cal. 308, 312;

Taboada v. Sociedad Espanola, etc. (1923), 191 Cal. 187, 191.

Because of this responsibility, many courts in addition to protecting property rights have stated that an expulsion

without a hearing and cause being shown, is invalid because it violates the fundamental principles of natural justice.

Grand Grove, etc. v. Duchein (1895), 105 Cal. 219, 222;

Taboada v. Sociedad Espanola, etc. (1923), 191 Cal. 187, 191;

Gray v. Allison (1909), 25 Times L. 531 (Eng.), 175 A. L. R. 514;

Burns v. National Amalgamated Labourers Union (1920), 2 Ch. (Eng.) (364), 175 A. L. R. 514.

In addition to the principle that basic concepts of justice demand that a person receive a hearing, some courts have stated that the power to expel, is actually penal in nature and ought not to be allowed to affect men's reputations and humiliate them without some reasonable check being imposed.

Berrien v. Pollitzer (1947), 165 F. 2d 21, 23;

D'Arcy v. Adamson (1913), 29 Times L. (Eng.), 367, 175 A. L. R. 514;

Fisher v. Keane (1878), 1 R. 11 Chanc. Div. 353 (Eng.), 175 A. L. R. 507.

In *Berrien v. Pollitzer*, *supra*, in discussing classes of cases in which a property right was respected in form, but disregarded in substance, the court stated at page 23:

"One such class involved 'wrongful expulsion from social clubs where the real wrong complained of is the humiliation and injury to feelings. Here . . . courts of equity generally insist upon some shadow of a property interest, however trivial; actually protecting the feelings, but purporting to protect only the pocketbook. . . . Something is found which

gives the camel's nose legitimate standing in the chancellor's tent, and the whole beast follows in order to dispose of the case completely. Such devices never obtain except when we are dealing with a moribund rule. . . .' *It seems plain that the club member's interest of personality should be the object of consideration regardless of the nature of the club*, and that the real question is whether the injury to these interests is sufficiently serious to warrant judicial interference with the internal affairs of a social organization." (Emphasis ours.)

This case is particularly applicable herein, since the plaintiff therein was not directly expelled from membership in a political party, but was only excluded from its "headquarters". In condemning this indirect procedure, the court further held at page 23,

"Appellees suggest that appellant has not been expelled. We think the resolution purports to expel her, but we also think it immaterial to the court's jurisdiction whether she has been expelled from membership or merely excluded from a member's essential privilege of using the Party's quarters. She has been excluded without a 'regularly conducted' trial, on due notice, by 'constituted corporate authorities,' and a 'judgment arrived at . . . in good faith.'"

Had a written contract existed between the parties, the actions of the appellees herein would not have been sanctioned by the laws of the State of California, since it is well established that an absolute power of termination is void under contract law.

Naify v. Pacific Indemnity Co. (1938), 11 Cal. 2d 5, 12;

Fabbro v. Dardi & Co. (1949), 93 Cal. App. 2d 247, 251.

It is respectfully submitted that the “property rights” of the appellant, is entitled to the protection of the courts and that the first and second counts of the complaint herein, setting forth such property rights, each adequately states an actionable claim.

III.

That the Dismissals Herein, Being Predicated Solely Upon the Alleged Insufficiency of the Pleadings, Should Not Have Been Granted “With Prejudice.”

It is an elementary concept of law that each litigant is entitled to “his day in court,” and that matters should be adjudicated upon their merits and not upon the technicalities of pleadings. It was to avoid the effects of technical pleadings that resulted in injustices as to the merits of the matter, that the liberalized Federal Rules of Civil Procedure, were adopted.

The within action, as to the first and second causes of action, was not a judicial determination predicated upon the merits of the matter, but solely upon the alleged technical insufficiency of the pleadings [Tr. of Rec. pp. 96, 97].

The prior amendments to the complaint were by reason of the granting of Motions to Quash service of the summons, in each instance, on the ground that the facts of Federal Jurisdiction had not been stated [Tr. of Rec. pp. 3, 7]. That the amendments successfully alleged Federal Jurisdiction, in the Second Amended Complaint, is indicated by the holding of this Honorable Court that such Federal Jurisdiction exists under the allegations of such complaint.

The question of pleadings and the sufficiency thereof, was first considered by the District Court, upon the Motion to Dismiss, herein. Upon the first consideration of

the sufficiency and technicalities of pleading, the District Court granted the Appellees' Motion to Dismiss as to the first and second causes of action of the complaint, under consideration, *with prejudice*.

That a Motion to Dismiss performs the function formerly performed by a common law demurrer, is well established and recognized, particularly in this jurisdiction.

Abram v. San Joaquin Cotton Oil Co. (1942), 46 Fed. Supp. 969, 974;

Flanigan v. Security-First Nat'l Bk. of Los Angeles (1941), 41 Fed. Supp. 77, 79.

Authorities cited in each of the foregoing cases indicate the universal application of this principle of law.

It is respectfully submitted that since, as material a subject matter as the right to pursue a profession, for which the appellant conscientiously and diligently trained and qualified himself, is involved where the technicalities of pleadings are considered for the first time, a Motion to Dismiss should not be granted, with prejudice, and thus precludes the appellant from perfecting his claim and asserting his rights with the ultimate accomplishment of having a determination upon his asserted claims based on the merits thereof.

That upon a Motion to Dismiss, where relief can be granted, no discretion may be exercised by the court, is established in this circuit, in the case of *Yuba Consolidated Gold Fields v. Kilkery* (1953), 206 Fed. 884, where at page 889, this Honorable Court held:

“ . . . On a motion to dismiss the facts properly pleaded in the bill must be taken as established; therefore the motion to dismiss should have been denied. A ruling on a motion to dismiss for failure to state a

claim upon which relief can be granted is a ruling on a question of law and does not admit the exercise of discretion.”

The rule as to the liberality of pleading was the subject of the decision of this Honorable Court in *Sidebottom v. Robison* (1954), 216 F. 2d 816, where this Honorable Court considers and evaluates the rule of liberal pleadings, as follows:

“Rule 8 restricts pleadings to a short and plain statement of (1) the grounds for the court’s jurisdiction, (2) a similar statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief for which he deems himself entitled. And the courts have applied these rules generously. See, for instance: *Leimer v. State Mutual Life Assur. Co.*, 8 Cir., 1940, 108 F. 2d 302 (claim to portion of proceeds of life insurance policy); *United States v. Sinclair Refining Co.*, 10 Cir., 1942, 126 F. 2d 827, 830-831 (recovery of damages for fraud from agent of Indians); *Machado v. McGrath*, 1951, 89 U. S. App. D. C. 70, 193 F. 2d 706 (action to declare plaintiff admissible to permanent residence and citizenship in the United States). The reason behind these rulings is well summed upon in *Leimer v. State Mutual Assur. Co.*, *supra*, 108 F. 2d at page 306:

‘In view of the means which the Rules of Civil Procedure afford a defendant to obtain a speedy disposition of a claim which is without foundation or substance, by either securing a more definite statement or a bill of particulars under Rule 12(e) and thereafter applying for judgment on the pleadings under Rule 12(h)(1), or by moving for a summary judgment under Rule 56, we think there is no justi-

fication for dismissing a complaint for insufficiency of statement, except where it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim.’ ”

The foregoing cases have been cited from the numerous Federal cases upon the same subject matter, since they are the most recent cases thereon, decided by the Court of Appeals of this circuit. Other cases supporting such rules are cited in Appellant’s Opening Brief (pp. 38, 39).

It is respectfully submitted that assuming, but not conceding the insufficiency of the allegations of the first and second causes of action of the complaint in question, no dismissal should have been granted “with prejudice,” but that an opportunity should have been afforded the appellant to rectify the situation by repleading his said causes of action. Such contention is particularly applicable for, as hereinbefore indicated, the Motion to Dismiss herein, was the first time that the sufficiency of the allegations of the pleadings, were considered by the District Court.

As stated in the case of *Topping v. Fry* (1945), 147 F. 2d 715, at page 178:

“We think plaintiff should have been given an opportunity to clarify his complaint. The very deficiencies of the pleading seem to furnish all the more reason why it should not have been dismissed on defendants’ motions without leave to amend. From the welter of immaterial facts stated in the complaint here involved we think it is possible to spell out a cause of action based on allegations of a contract, performance by plaintiff, and failure to perform on the part of at least defendant Fry, and possibly the Company. See *Kraus v. General Motors Corpora-*

tion, D.C., 27 F. Supp. 537. *Under the liberalized procedure provided for by the new rules, we think it is error to dismiss a complaint with prejudice if it appears that any relief could be granted on the facts stated.* See Cyclopedia of Federal Procedure (2d Ed.) Vol. 5, Section 1601. As stated in Moore's Federal Practice, Vol. 1, Section 8.01, '*Litigation is not an art in writing nice pleadings. It can and should seldom be settled on its merits at the pleading stage. . . .*'" (Emphasis ours.)

That this Honorable Court may, in the furtherance of justice, where the District Court has ordered a dismissal, with prejudice, modify such order by providing that "the judgment is modified to provide for dismissal but not for dismissal upon the merits," is authorized by the holding of *Producers Releasing Corporation, etc. v. P. R. C. Pictures* (1949), 176 F. 2d 93, 96.

Conclusion.

It is respectfully submitted that the facts set forth in the first and second causes of action of Appellant's Second Amended Complaint, indicate the existence of a *property right* in favor of appellant, which has been violated by the conduct, including both misfeasance and non-feasance, of the appellees. That such property right is a right recognizable under the laws of the State of California and the Federal Courts, sitting within said state. That the cases herein cited arising in the Commonwealth of Massachusetts indicate that such right is recognizable under the laws of the jurisdiction wherein the corporate appellees, obtained their "*de jure*" existence. It is further

respectfully submitted that since the dismissal granted by the District Court herein was not on the merits of the matter, but was upon the technical and sufficiency of the pleadings, and since the same was the first consideration thereof by the District Court, that the dismissal *with prejudice* of said causes of action, was both inequitable and improper, under established principles of law.

For the aforesaid reasons, appellant respectfully prays and requests that this Honorable Court grant him a rehearing of that portion and part of the decision of this Honorable Court, rendered on the 30th day of August, 1955, which holds and determines that said first and second causes of action of said complaint are not actionable claims and that the dismissal thereof, *with prejudice*, granted by the District Court, was proper. Appellant further prays and requests that in such rehearing had by this Honorable Court thereon, it being either held that each and both of said causes of action, are actionable claims upon the theory of the violation of the *property right* of appellant, or that the dismissal thereof be modified by this court to indicate that the same, as to each causes of action, are without prejudice and not upon the merits of the matter.

Respectfully submitted,

EUGENE L. WOLVER,

Attorney for Appellant.

Certificate of Counsel.

I, Eugene L. Wolver, counsel for Petitioner in the above entitled action, hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay, and in my opinion is well founded in law and in fact, and proper to be filed herein.

EUGENE L. WOLVER,

Attorney for Petitioner.

No. 14201

United States
Court of Appeals

For the Ninth Circuit.

See Note - 2906-2907

CHET L. PARKER and LOIS M. PARKER,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees.

Transcript of Record

In Five Volumes

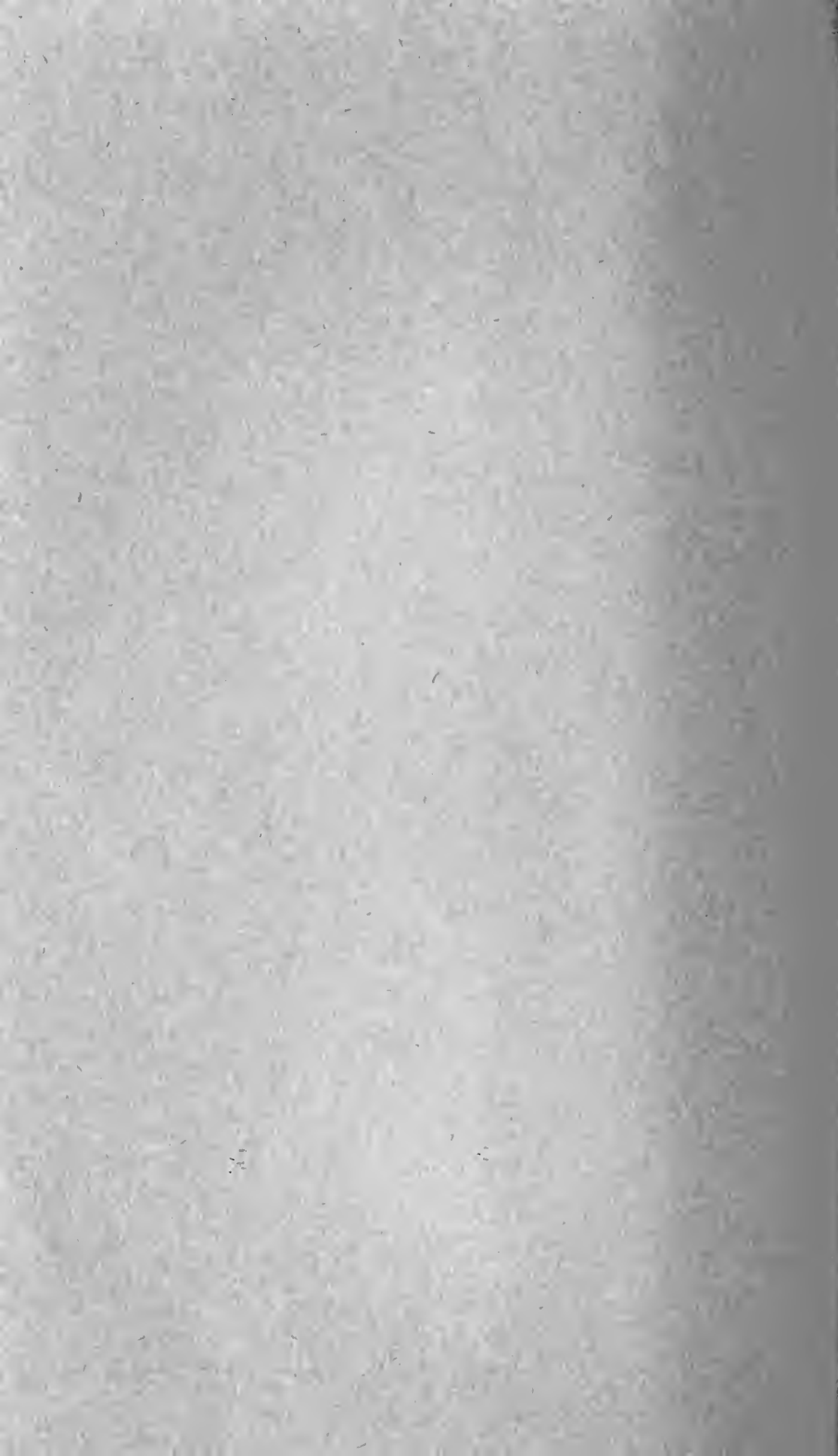
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Appeals from the United States District Court for the
District of Oregon

PAUL P. O'BRIEN
CLERK



No. 14201

**United States
Court of Appeals
For the Ninth Circuit.**

CHET L. PARKER and LOIS M. PARKER,
Appellants,
vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,
Appellees,
and

WALTER STEGMANN,
Appellant,
vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,
Appellees.

Transcript of Record

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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Portland, Oregon,

For Appellees Paul Winans, et al.

In the District Court of the United States
for the District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,
Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and
WALTER STEGMANN,
Defendants.

AMENDED COMPLAINT

Comes now the plaintiff and for cause of action
against the defendants alleges:

I.

That at the time of commencement of this action
plaintiff was and now is a corporation organized un-
der the laws of the State of Oregon and authorized
thereby to engage in the business of insuring title
to real property.

II.

That defendants, Chet L. Parker and Lois M.
Parker, are husband and wife, and at the time of
commencement of this action were and now are
residents of the State of Washington.

III.

That at the time of commencement of the above
action, defendant Walter Stegmann was and now
is a resident of the State of Washington.

IV.

That the amount in controversy between plaintiff and Parkers and between plaintiff and Stegmann in each instance exceeds the sum of \$3,000 exclusive of interests and costs and attorney's fees.

V.

That by Act of Congress February 14, 1859, admitting Oregon as a state of the United States of America, 11 Stat. at Large 383, Chapter 33, Section 4, Sections 16 and 36 in each township in said state not sold or otherwise disposed of at said time were granted to the State of Oregon for use as school lands.

VI.

That at the time of the admission of the State of Oregon into the United States of America, the following described property was a part of the public lands of the United States of America, and said property had not been sold or otherwise disposed of; and that subsequent to the admission of said state and prior to February 11, 1889, no patent has been issued on said property by the United States of America:

The Northeast one-quarter of the Northwest one-quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, Hood River County, Oregon (hereinafter referred to as "Lot 2").

VII.

That the official United States Government survey

of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian as made and approved by the Commissioner of the Land Office of the Department of the Interior of the United States of America on June 17, 1892, was as represented on the attached Exhibit A.

VIII.

That on June 17, 1892, all public lands within Section 16, Township 1 South, Range 8 East, Willamette Meridian were set apart and included within that portion of the Mt. Hood National Forest known as the "Bull Run Timber Reserve" by proclamation of the President of the United States.

IX.

That some prior to July 30, 1907, the State of Oregon selected the Northwest one-quarter of the Northwest one-quarter of Section 28, Township 20 South, Range 21 East, W.M., as lieu lands for the said Lot 2 and on July 30, 1907, the Commissioner of the General Land Office of the Department of Interior of the United States of America officially approved said selection of lieu lands.

X.

That none of the facts or matters set forth in Paragraphs VII, VIII, and IX above are matters of record in the official records of Hood River County, Oregon.

XI.

The following deeds purporting to convey the above-described property are shown by the official

records of deeds of Hood River County, Oregon, as follows and none others and that said conveyances set forth below were made, executed and delivered:

1. State of Oregon to Chas. A. Macrum by grant deed dated February 11, 1889, filed of record in Hood River County on April 13, 1907, in Volume L, page 288 of Deeds, and also filed of record in Volume 43, at page 480 of the Deed Records of Wasco County, State of Oregon.

2. C. A. Macrum (an unmarried man) to W. R. Winans by warranty deed dated April 25, 1902, and filed of record in Hood River County, Oregon, on April 26, 1902, in Volume K at page 481 of the Deed Records of Hood River County, Oregon, and also filed of record in Volume 33 at page 595 of the Deed Records of Wasco County, Oregon.

3. W. R. Winans and Mary Winans, husband and wife, to Ethel Winans by bargain and sale deed dated December 29, 1943, and filed of record on December 30, 1943, in Volume 30 at page 405 of the Deed Records of Hood River County, Oregon.

4. Ethel Winans, a single woman, to Chet L. Parker by deed dated September 10, 1951, and filed of record September 11, 1951, Volume 46 of Deeds, Instrument No. 80451 and a copy of which deed is hereto annexed marked Exhibit B.

XII.

That subsequent to February 11, 1889, and to date Hood River County, as a political subdivision of the State of Oregon, has assessed, levied and collected

real property taxes, including fire patrol assessments on said lot 1 and lot 2 and said taxes were paid from the tax years 1902-1903 through and including 1950-1951 by W. R. Winans and by Ethel Winans or by Paul Winans on their behalf.

XIII.

That on or about December 30, 1943, Paul Winans and Ethel Winans made application for and on said date the Pacific Abstract Title Company, by the Hood River Abstract and Investment Co., its agent, issued to Ethel Winans a policy of title insurance No. 136-HR-37882 in the face amount of \$8,000.00, insuring a fee simple title in said Lots 1 and 2 in the said Ethel Winans free from all encumbrances, subject to certain exceptions contained and set forth in said policy not material herein.

XIV.

Commencing in 1939 Paul Winans had carried on negotiations with the Forest Supervisor of the Mt. Hood National Forest of the Forest Service, United States Department of Agriculture, for the exchange of said Lots 1 and 2 for certain United States timber lands. Such negotiations continued over the succeeding years until the said Forest Supervisor wrote Paul Winans a letter, dated January 9, 1944, stating in part, that the United States claimed ownership of said Lot 2 but proposing to proceed with the exchange of said Lot 1. Paul Winans replied by letter dated February 5, 1944, that by virtue of all available records, plats and tax assessments

W. R. Winans had been the openly recognized owner of said Lot 1 and Lot 2 and that he was referring the claim of the United States to the Pacific Abstract Title Company under the policy of title insurance made by them. Attorney F. M. DeNeffe was retained to represent Ethel Winans in connection with her rights under said policy of title insurance.

XV.

That by letter, dated March 3, 1944, drafted by said F. M. DeNeffe and signed by Ethel Winans, a claim was made against the said Pacific Abstract Title Company under said policy on account of the defect in and the unmarketability of the title of the said Ethel Winans to said Lot 2. On or about April 3, 1944, Ethel Winans received the sum of \$3,000.00 from said company in full settlement and discharge of said claim; and as part of the consideration of said settlement the said company waived all rights and claims of every kind to said Lot 2 as against Ethel Winans, her heirs and assigns, the United States, the State of Oregon, and to any monies recovered or recoverable from Hood River County by reason of taxes theretofore paid on said Lot 2 and also endorsed on said policy of title insurance its continued liability as to the said Lot 1 in the sum of \$2,000.00.

XVI.

That on Saturday, August 11, 1951, Paul Winans and Ethel Winans executed and delivered to the defendant Walter Stegmann, a document entitled "Option," a true copy of which is hereto annexed

as Exhibit C, and that Stegmann either acquired said option for Parkers or assigned it to Parkers on or about August 13, 1951, by a written document, a copy of which is hereto annexed, marked Exhibit G.

XVII.

That on August 15 or 16, 1951, plaintiff delivered to defendant Chet L. Parker a preliminary report as to the title of the said Lots 1 and 2 and accepted from him the sum of \$25.00 and that a copy of said preliminary report is hereto attached marked Exhibit D.

XVIII.

That on August 18, 1951, Parkers either personally or by their duly authorized agent exercised said Option by executing a written notice of election to purchase and paying the second installment on the purchase price of said property provided for in said Option, and a copy of which notice of election to purchase is hereto annexed marked Exhibit H.

XIX.

That on or about September 4, 1951, plaintiff issued to defendant Chet L. Parker a policy of purchaser's title insurance in the face amount of \$125,000 showing a fee simple title to said Lots 1 and 2 to be in Ethel Winans as of 8 o'clock a.m. August 30, 1951, and that a true copy of said policy of purchaser's title insurance is hereto annexed marked Exhibit E, and that plaintiff on August 30, 1951, accepted from said defendant the sum of \$405.00 in

payment of the balance of the premium on said policy of title insurance.

XX.

That on September 11, 1951, Parkers caused a cashier's check in the sum of \$95,000 to be delivered to Paul and Ethel Winans and received delivery of the deed set forth in Exhibit B with the grantee's name left in blank, together with a refund in the sum of \$4,750 on account of additional acreage reserved to the grantors in said deed not provided for in said option.

XXI.

That thereafter on or about September 12, 1951, plaintiff issued to Parkers at their request a policy of owner's title insurance in the principal amount of \$125,000 insuring a fee simple title to said Lots 1 and 2 in Chet L. Parker, subject to certain exceptions not herein material, and a copy of which policy is hereto annexed marked Exhibit F, and that no additional premium was charged or paid for said owner's policy of title insurance, and that at said time said purchaser's policy of title insurance was surrendered by Parker to plaintiff.

XXII.

That at the time of delivery of said policy of owner's title insurance and surrender of said policy of purchaser's title insurance plaintiff notified Parkers that it had been advised by a representative of the United States Forest Service that the United States of America claimed ownership of said Lot 2, and that the giving of such notice to Parkers oc-

curred not earlier than September 12, 1952, nor later than September 16, 1951.

XXIII.

That Parkers did not give plaintiff notice in writing or otherwise of the claim of ownership of the United States of America to the said Lot 2 prior to the time that plaintiff notified Parkers of that claim as set forth in Paragraph XXII above.

XXIV.

That at all times herein mentioned subsequent to January, 1944, Winans' family knew that the title of Ethel Winans to Lot 2 was not marketable and that the United States claimed ownership thereto.

Plaintiff's Claims Against Parkers

First Count

XXV.

That Stegmann at the time of acquiring said option was acting as an agent for an undisclosed principal, which undisclosed principal was the defendant Chet L. Parker.

XXVI.

In the alternative that at all times between August 13, 1951, and September 11, 1951, Stegmann was the duly authorized and acting agent for an undisclosed principal, which undisclosed principal was defendant Chet L. Parker.

XXVII.

Or, in the alternative that at all times between August 13, 1951, and September 11, 1951, Stegmann

was the duly authorized agent of defendant Chet L. Parker acting within the scope of his authority.

XXVIII.

That Lois Parker on September 10 and 11, 1951, was the duly authorized agent for an undisclosed principal, which undisclosed principal was defendant Chet L. Parker.

Concealment of Facts Material to the Risk

XXIX.

That Parkers had notice of and knew of the claim of ownership of the United States to Lot 2 and of the loss collected by Ethel Winans under the prior policy of title insurance at the time of application for issuance of a preliminary report on the title to subject property, and at the time of application for the issuance of said policy of purchaser's title insurance.

XXX.

That Parkers failed to disclose to plaintiff the fact that they had notice of a claim of ownership by the United States to Lot 2 at the time of application for issuance of said preliminary report and delivery thereof or at the time of application for issuance of said policy of purchaser's title insurance.

XXXI.

That plaintiff did not know or learn of said claim of ownership of the United States to the said Lot 2 prior to the issuance of said preliminary report or

the issuance of said policy of purchaser's title insurance.

XXXII.

That said claim of ownership was material to the risk to be insured and that plaintiff would not have issued said preliminary report or said policy of purchaser's title insurance if it had learned that the United States claimed ownership of the said Lot 2.

Second Count, Fraudulent Concealment

XXXIII.

That Parkers deliberately and intentionally concealed from plaintiff their knowledge of the fact that the United States claimed ownership to the said Lot 2 for the purpose of fraudulently inducing plaintiff to issue a policy of title insurance insuring a fee simple title to the said Lot 2 and assume liability for any loss or damage to Parkers on account of said claim of ownership.

XXXIV.

That Parkers represented to plaintiff by words and conduct that they knew of no defect or possible defect in the title of Ethel Winans to the said Lot 2 at all times prior to the time when plaintiff notified Parkers of the claim of ownership by the United States.

XXXV.

That in reliance thereon plaintiff issued said policy of purchaser's title insurance and thereafter issued said policy of owner's title insurance to Parkers.

XXXVI.

That if Parkers had disclosed to plaintiff their knowledge of the claim of ownership of the United States to Lot 2, plaintiff would not have issued said purchaser's policy of title insurance or said owner's policy of title insurance.

Third Count

Breach of Condition of Policy

XXXVII.

That Parkers had notice of a defect in the title to said Lot 2 by virtue of said claim of ownership of the United States between August 30, 1951, and September 10, 1951, and prior to the payment of the balance of the consideration for the purchase of said property to the Winans family and the receipt of the deed to said property.

XXXVIII.

That Parkers failed to give notice in writing or otherwise of said defect described in the preceding paragraph in writing or otherwise, and thereby breached the condition of said policy of purchaser's title insurance which reads as follows: "Upon receipt of notice of any defect, lien or encumbrance hereby insured against, the insured shall forthwith notify the Company thereof in writing."

XXXIX.

That if Parkers had given plaintiff such notice, plaintiff would have notified Parkers that plaintiff would refuse to hold itself liable for any additional

loss or damage to Chet L. Parker subsequent to the date that the said defendant Chet L. Parker received notice of such defect.

XL.

That if Parkers had given plaintiff such notice, the balance of the purchase price would not have been paid by Parkers to Winans, and any loss or damage sustained by Parkers would not have exceeded the consideration paid for assignment of said option.

Fourth Count

Breach of Policy Condition Respecting
Claim for Loss

XLI.

That Parkers have failed and refused to furnish a full statement of their claimed loss under said policy in writing and have breached the following condition of said policy:

“Every claim for loss under this policy must be in writing, giving a full statement thereof and be delivered to the Company at its Home office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.”

and have further breached their duty to co-operate with plaintiff in the exercise of its subrogation rights.

Fifth Count

Applicability of Policy, Exclusion No. 2

XLII.

That during all of the times herein mentioned and specifically at the time of the grant of said option and the giving of the notice of election to purchase and the issuance of said policies of title insurance, the United States of America, through the Supervisor of the Mt. Hood National Forest was in possession or claiming to be in possession of said Lot 2.

Plaintiff's Alternative Claims Against Stegmann
First Count—Mutual Mistake

XLIII.

That during the negotiations leading up to the grant of the Option set forth in Exhibit C Winans family represented to Stegmann that they had a good marketable title to Lot 2.

XLIV.

That said representations were false and that the Winans family knew they were false; that they failed to disclose this knowledge of the defect in said title and the facts pertaining thereto and that they intended that Stegmann rely thereon.

XLV.

That Stegmann purchased said option for the sum of \$1,000.00 on August 8, 1951, in reliance upon said representations and did not know they were false; that said sum was obtained by Stegmann from

Parkers under a loan commitment previously granted to him.

XLVI.

That thereafter Stegmann represented to Parkers that he had a good and sufficient option set forth in Exhibit C to acquire title to Lot 1 and Lot 2 and the timber thereon and showed said options and property to Parkers and that he intended that Parkers rely thereon.

XLVII.

That in reliance upon said representation Parkers purchased said option from Stegmann on or about August 13, 1951, for a valuable consideration, the exact nature of which is uncertain and difficult of exact determination, and which consideration included in part the extinguishment of certain financial obligations of Stegmann; that at said time Stegmann was insolvent.

XLVIII.

That there is attached hereto marked Exhibit G a copy of said assignment; that Stegmann and Parkers entered into a collateral verbal agreement under which Stegmann was to pay Winans family the \$4,000.00 payment provided for in said option at time of exercise thereof, out of proceeds of said loan commitment.

XLIX.

That at the time of assignment of said option Parkers and Stegmann were each mutually mistaken as to the condition of the Winans title to Lot 2 and believed that said title was marketable.

L.

That it would be inequitable and constitute unjust enrichment to permit Stegmann to retain the whole of said consideration.

LI.

That the purpose of which Parkers purchased said option and the basis upon which the consideration for the assignment thereof was determined was the timber values located on said Lots 1 and 2.

LII.

That a just basis for the proportionate abatement of the total purchase price of said option is the proportion that \$90,000 bears to \$125,000 times the value of the consideration received by Stegmann on account of the assignment and purchase of said option.

Second Count

Fraudulent Concealment

LIII.

That Stegmann at the time he assigned said option to Parkers knew of the unmarketability of the Winans title to Lot 2, yet represented to Parkers that the title was marketable and failed to disclose to Parkers his knowledge of the claim of ownership of the United States or the basis therefor and intended that Parkers rely on said representations.

LIV.

That Parkers purchased said option in reliance upon said representations and paid the consideration set forth in Paragraph XLVII above.

LV.

That Parkers in further reliance on said representations advanced Stegmann the sum of \$4,000.00 with which to exercise said option and subsequently paid Winans family the sum of \$90,250.00 for the conveyance of said Lots 1 and 2 on September 11, 1951, some part of which may have been refunded to Parkers.

LVI.

That the reasonable market value of Lot 1 less the acreage reserved by Ethel Winans as of September 11, 1951, was the sum of \$35,625.00.

LVII.

That plaintiff has suffered damage as a direct result of the foregoing fraudulent conduct of defendant Stegmann in whatever it is found to be liable for to Parkers under said policies of title insurance on account of said defect in title to Lot 2.

Plaintiff's Claims for Declaratory Relief
Against Stegmann

LVIII.

That Parkers have demanded that plaintiff indemnify them from all loss or damage sustained by them on account of a claimed defect in the title to said Lot 2 in the total sum of \$125,000, together with costs and attorneys fees.

LIX.

That plaintiff claims a right to indemnity in whole or part from Stegmann for any loss or damage for which it might be held liable to Parkers.

LX.

That there are common disputed questions of fact and law in the controversy between plaintiff and Parkers and the controversy between plaintiff and Stegmann, which common questions of fact and law include the following:

(a) What is the legal effect of the grant of subject option and the exercise thereof.

(b) Whether Stegmann, in acquiring said option, was acting in his own behalf or as an agent for an undisclosed principal which was defendant Chet L. Parker.

(c) Whether or not, after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal who was defendant Chet L. Parker, or as an agent for a disclosed principal, defendant Chet L. Parker, with limited authority, which limitation was known to Winans family.

(d) What was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

(e) What is the extent of the defect in or failure of title to Lot 2.

(f) What was the total amount of the loss or damage sustained by Parkers as a result of said defect or failure.

(g) What portion of said loss or damage is covered under said purchaser's or owner's policy

of title insurance and recoverable by Parkers from plaintiff.

(h) What was the reasonable market value of Lot 2 and what was the reasonable market value of Lot 1 less the reserve acreage at the time of subject transaction.

(i) What would be a just basis of abatement of a portion of the purchase price for the assignment of said option.

(j) Whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

(k) Whether or not Stegmann disclosed to Parker his knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

LXI.

That by reason of the foregoing, a bona fide justifiable controversy exists between plaintiff and Stegmann.

Wherefore, plaintiff prays that the court make and enter a judgment herein as follows:

1. Cancelling and setting aside and holding for nought the policies of purchaser's and owner's title insurance heretofore issued by plaintiff to defendant Chet L. Parker effective August 30, and September 12, 1951, respectively, and awarding defendant Chet

L. Parker judgment against plaintiff in the sum of \$430.00, together with legal interest on \$25.00 thereof from August 30, 1951, and on \$405.00 thereof from September 12, 1951, until paid.

2. Declaring that said policies of title insurance do not insure against any loss or damage sustained by Parkers on account of any defect in or unmarketability of the title to Lot 2.

3. Declaring that upon the exercise of the option set forth in Exhibit A by the giving of Notice of Election to Purchase and the payment of the second installment of the purchase price provided in said option, a binding executory contract of sale was created under which the sellers agreed to sell and convey marketable title to Lots 1 and 2, and the buyers agreed to purchase same according to the terms thereof.

4. Declaring whether Stegmann in acquiring said option was acting in his own behalf or as an agent for an undisclosed principal, Chet L. Parker.

5. Declaring whether or not after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal, Chet L. Parker, or as an agent for a disclosed principal, Chet L. Parker, with limited authority, and if the latter, whether or not the limitation on authority was known to Paul and Ethel Winans.

6. Declaring what was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

7. Declaring what estate, title or interest in Lot 2 was conveyed to Chet L. Parker under the conveyance set forth in Exhibit B.

8. Declaring and determining what was the total amount of the loss or damage sustained by Parkers as a result of said defect in or unmarketability of the title to Lot 2.

9. Declaring and determining what was the reasonable market value of the estate, title or interest in Lot 2 conveyed to defendant Chet L. Parker by said deed set forth in Exhibit B and what was the reasonable market value of Lot 1 less the reserved acreage at the time of said conveyance.

10. Declaring and determining what would be a just basis for abatement of a portion of the purchase price or consideration paid for the assignment of said option.

11. Declaring and determining whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

12. Declaring and determining whether or not Stegmann disclosed to Parker his knowledge, if any, relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

13. In the alternative, should the court deny plaintiff's prayer for cancellation of said policies of title insurance, then for a judgment declaring

and determining the amount of loss or damage sustained by Chet L. Parker by reason of said defect in or unmarketability of the title to Lot 2 insured under said policies of insurance, and awarding him judgment therefor and declaring and determining the extent, if any, to which Chet L. Parker is entitled to participate in any subrogation recovery against Stegmann.

14. In the alternative, should the court deny plaintiff's prayer for a cancellation of said policies of title insurance, then for a judgment in favor of plaintiff and against the defendant Walter Stegmann in an amount equal to the judgment entered in favor of Parkers and against plaintiff conditioned only upon payment thereof by plaintiff to Parkers.

15. In the alternative, should the court deny the prayer set forth in prayer 13 above, then for judgment in favor of plaintiff and against defendant Walter Stegmann for an amount equal to the proportionate abatement of the purchase price or consideration paid to Stegmann for the assignment of said option as determined under prayer 10 above, said judgment to be conditioned upon prior payment by plaintiff of the judgment entered against it and in favor of Parkers.

16. Awarding plaintiff such further and equitable relief as to the court may seem proper, together with its costs and disbursements herein.

GRIFFITH, PHILLIPS &
COUGHLIN,

By /s/ JAMES K. BUELL.

EXHIBIT B

Bargain and Sale Deed

Know All Men by These Presents, that Ethel Winans, a single woman, of Hood River, Oregon, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration to me in hand paid by Chet L. Parker of Rt. 3, McMinnville, Oregon, has bargained and sold and by these presents does grant, bargain, sell and convey unto the said Chet L. Parker, and unto his heirs and assigns, all her right, title and interest in and to the following described real property in the County of Hood River, State of Oregon, to wit:

Government Lot One (1) and the Northeast quarter of the Northwest quarter, Section 16, Township 1 South, of Range 8 East, of the Willamette Meridian, containing 65.88 acres of land, more or less.

Saving and Excepting therefrom the following described tract of land: Starting at the existing Meander Corner at the Intersection of the Section line between Sections 9 and 16, Township 1 South, Range 8 E., W.M., with Lost Lake as set by the General Land Office and now being in nine inches of water, and then following in a Southwesterly direction along the meander line of Lost Lake to a 1" iron pipe set in the edge of the water, which point may also be reached by starting from said Meander Corner and running thence West 43° 00' South a distance of 100 feet to a point, thence West

42° 30' South a distance of 100 feet to a point, thence West 38° 10' South a distance of 100 feet to a point, thence West 38° 40' South a distance of 100 feet to a point, thence West 32° 10' South a distance of 100 feet to a point, thence West 30° 30' South a distance of 100 feet to the said 1" iron pipe set in the edge of the water on the shore line of Lost Lake, which 1" iron pipe is the true point of beginning for the land hereby excepted (and which said pipe has a 5" live cedar bearing tree bearing West 16° 00' North a distance of 22.05 feet and a 14" dead cedar bearing tree bearing West 07° 40' South a distance of 26.25 feet), thence West a distance of 200 feet to a 1" iron pipe (having a live Hemlock bearing tree 36" in diameter bearing South 07° 00' West a distance of 6.42 feet and a white fir bearing tree 8" in diameter bearing East 25° 00' North a distance of 13.17 feet), thence South a distance of 286.12 feet to a point, thence West a distance of 137.84 feet to a 1" iron pipe (having a live cedar bearing tree 24" in diameter bearing South 09° 00' West a distance of 3.33 feet), thence South 58° 30' West a distance of 425 feet, more or less, to a point on the West line of said Government Lot One which is 350 feet North of that 1" iron pipe set on the West line or southern extension of the West line of said Government Lot One and is 1320 feet South of the Northwest corner of said Lot One, thence South 350 feet, more or less, to the Southwest corner of said Lot One, thence East along the South line of said Government Lot One a distance of 848

feet, more or less, to the meander line of Lost Lake, thence in a Northerly direction following the meander line of Lost Lake a distance of 900 feet, more or less, to the point of beginning.

Also Saving and Reserving to the Grantor and her assigns from and over the lands hereby conveyed a right to cross and recross to the land reserved over the U. S. Forest Service Way Trail as the same now exists together with the right to construct a road along the same and not in excess of 121½ feet on each side of the center line of said Way Trail as the same now exists, and in the event that the grantee or his successors and assigns shall construct a roadway of comparable or better grade along the same general line that the grantor and her assigns may use such road and terminate the use of said Way Trail or the road which follows it. Grantor will place at the North line of the premises of the road if constructed by her a gate so as to prevent general public vehicular traffic and that both parties may use either roadway. That any trees removed by the grantor and her assigns in the construction of the road by her shall be piled along the road right of way and the grantor and her assigns shall have no claim to the trees so cut.

Also Reserving to the grantor and her assigns the right to cross the lands hereby conveyed with a domestic water pipe line at such place as will not interfere with any improvements that grantee may construct.

To Have and to Hold the above-described and

granted premises unto the said Chet L. Parker, and to his heirs and assigns forever.

In Witness Whereof, I have hereunto set my hand and seal on this 10th day of September, 1951.

[Seal]

ETHEL WINANS.

10th September, 1951.

State of Oregon,
County of Hood River—ss.

Personally appeared the within-named Ethel Winans, a single woman, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:

W. VAWTER PARKER,

Notary Public for Oregon.

My commission expires March 7, 1954.

EXHIBIT C

Option

On or before seven days after date hereof, for and in consideration of the sum of \$1000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as The Sellers, agree and promise to sell to Walter Stegmann, his heirs or assigns, hereinafter designated The Buyer, at his option, the following described real property. NW $\frac{1}{4}$, NE $\frac{1}{4}$, (Lot 1) containing 25.88 acres, and

NE $\frac{1}{4}$, NW $\frac{1}{4}$ (Lot 2), containing 40 acres, more or less, in Section 16, Township 1 South, Range 8 East, Willamette Meridian in Hood River County, Oregon, excepting 8.88 acres located along and adjacent to the meandered water shore line of Lost Lake and which shall be selected, measured and staked out on boundaries mutually agreed upon on or before the expiration date of this option.

For the total sum of \$100,000.00 to be paid as follows:

Credit by check subject to collection paid on option herewith.....	\$ 1,000.00
Payment on even date of written notice of election of The Buyer to purchase under this option	4,000.00
Final payment to be made on even date of delivery of deed to above-described land by The Seller on or before ninety days from date hereof.....	95,000.00
	<hr/>
	\$100,000.00

For which The Seller agrees to deliver a good and sufficient deed of conveyance showing title free and clear of all mortgage, contract, judgment or tax liens, conveying to The Buyer all the right, title and interest of The Sellers to the above-described real property.

/s/ PAUL WINANS,
ETHEL WINANS.

Approved,

.....

EXHIBIT D

Title and Trust Company
Title and Trust Building
325 S.W. Fourth Avenue
Portland 4, Oregon

Hood River County Branch
Hood River, Oregon

Order No. HR12-987

August 15, 1951.

Chet L. Parker,
106 E. 33 Street,
Vancouver, Washington.

Dear Sir:

We are prepared to issue title insurance policy in the usual form as of August 15, 1951, at 8:00 a.m., insuring the title to

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian,

in

Ethel Winans
fee simple estate,

Subject to the usual printed exceptions, and

1. Mortgage, including the terms and provisions

thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated January 12, 1923, recorded on January 17, 1923, in Book 15, page 507, Mortgage Records Hood River County, given to secure the payment of a note for \$1000.00 with interest thereon.

2. Mortgage, including the terms and provisions thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, recorded on November 24, 1936, in Book 24, page 50, Mortgage Records Hood River County, given to secure the payment of a note for \$541.80 with interest thereon.

3. Suit to foreclose indebtedness above evidenced, W. B. Combs vs. W. R. Winans, et al., No. 3203, filed August 5, 1946, in State Circuit Court for Hood River County. Personal service was had upon all defendants, including Ethel Winans, on August 6, 1946. Following return of service, nothing more appears in the Court's file. Said suit should be dismissed by order of Court.

Note 1: 1950-51 and prior taxes have been paid. Said 1950-51 taxes amounted to \$23.87.

Note 2: We find no unsatisfied judgments of record against Chet L. Parker as of the date hereof.

Very truly yours,

TITLE AND TRUST COMPANY, HOOD RIVER
COUNTY BRANCH,

By EDW. E. MILLER, JR.,
Assistant Secretary.

EEM:hb

EXHIBIT E

Title and Trust Company
Title and Trust Building
325 S.W. Fourth Avenue
Portland 4, Oregon

(Copy)

Purchaser's Title Insurance Policy

\$125,000.00 Premium: \$430.00 No. HR12-987

For value, Title and Trust Company, a corporation (incorporated under the laws of the State of Oregon and duly authorized by the State Insurance Commissioner to insure titles in said state), hereinafter called the Company,

Does Hereby Insure

subject to the annexed conditions, hereby made a part of this policy,

Chet L. Parker

heirs and devisees (or if a corporation, its successors) hereinafter called the Insured, against loss or damage not exceeding One Hundred Twenty-Five Thousand Dollars, which the insured may sustain by reason of any defect in or unmarketability of the title of

Ethel Winans

hereinafter referred to as the Seller, to all the estate or interest in the premises specified and hereinafter described or by reason of liens or incumbrances

charging the same at the date of this policy; saving and excepting, and this policy does not insure against loss or damage by reason of any estate or interest, defect, lien, incumbrance or objection hereinafter set forth in the written or printed exceptions contained in this policy.

Any loss under this policy is to be established in the manner provided in said conditions and shall be paid upon compliance by the Insured with and as prescribed in said conditions, and not otherwise.

In Witness Whereof Title and Trust Company has caused these presents to be duly signed by its President or Vice-President, attested by its Secretary or Assistant Secretary and its corporate seal affixed this 30th day of August, 1951, at 8:00 o'clock a.m.

[Seal]

TITLE AND TRUST
COMPANY,

By /s/ FRANKLIN G. GRIFFITH,
President.

Attest:

(GERALD B. GREY),
Assistant Secretary.

Schedule A

The Estate or interest covered by this policy:
fee simple estate.

Description of the tract of land the title to which
is insured by this policy:

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian.

Schedule B

This policy does not insure against:

1. Any state of facts which an accurate survey and inspection would show; roads, ways and easements not established of record; the existence of county roads; water rights and water locations.
2. Rights or claims of persons in possession, or claiming to be in possession, not shown of record; material or labor liens of which no notice is of record.
3. Matters relating to assessments preceding the same becoming fixed and shown as a lien; taxes not yet payable; matters relating to vacating, opening or other changing of streets or highways preceding the final termination of the same.
4. Provisions and effect of any law or ordinance enacted for the purpose of **regulating occupancy or** use of said land or any building or structure thereon.
5. Mortgage, including the terms and provisions thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated January 12, 1923, recorded on January 17, 1923, in Book 15, page 507, Mortgage Records Hood River County,

given to secure the payment of a note for \$1000.00 with interest thereon.

6. Mortgage, including the terms and provisions thereof, executed by W. R. Winans and Mary Winans, his wife, to W. B. Combs, dated July 12, 1936, recorded on November 24, 1936, in Book 24, page 50, Mortgage Records Hood River County, given to secure the payment of a note for \$541.80 with interest thereon.

7. Suit to foreclose indebtedness above evidenced, W. B. Combs vs. W. R. Winans, et al., No. 3203, filed August 5, 1946, in State Circuit Court for Hood River County. Personal service was had upon all defendants, including Ethel Winans, on August 6, 1946.

Conditions

Upon receipt of notice of any defect, lien or incumbrance hereby insured against, the Insured shall forthwith notify the Company thereof in writing. In case any suit, action or proceeding is commenced to which the Insured is a party and which may result in loss under this policy, the Insured shall immediately after learning thereof notify the Company in writing, and within ten (10) days after service of process upon him secure to the Company the right to defend such suit, action or proceeding in the name of the Insured, so far as necessary to protect the Insured, and shall render all reasonable assistance in such defense. The Company will defend such suit, action or proceeding at its own cost, reserving, however, the option of settling the claim

or paying this policy in full at any time. But the Company shall in no case be liable for any costs or expense incurred by the Insured in such litigation without its consent.

In the event of final judicial determination by a Court of competent jurisdiction, under which the Insured is dispossessed or deprived of the real estate covered hereby, or his estate or interest insured is impaired by reason of any adverse interest, lien or incumbrance hereby insured against, or, if this policy covers a mortgagee's interest, if such final judicial determination shall defeat or impair the mortgagor's title to all or any part of the mortgaged premises or establish the priority to the mortgage of a lien or incumbrance not excepted in this policy, claim may be made hereunder, provided, the conditions have been in all ways complied with. Every claim for loss under this policy must be in writing, giving a full statement thereof, and be delivered to the Company at its Home Office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.

The Company may at any time pay this policy in full, whereupon all liability of the Company shall terminate. The total liability under this policy, exclusive of costs, shall in no case exceed the face of the policy, and every payment of the Company shall reduce the policy by the amount paid. When the Company shall have paid a loss under this policy it

shall be subrogated to all rights and remedies which the Insured may have against any person or property in respect of such claims, or would have if this policy had not been issued, and the Insured shall forthwith transfer all such rights to the Company accordingly. If the payment made by the Company does not cover the loss of the Insured, then such subrogation of the Company shall be proportionate. Or, the Company may, in case this policy covers a mortgagee's interest only, pay the Insured the entire mortgage indebtedness, with interest at the rate specified in the mortgage and thereupon the Insured shall assign and transfer to the Company the mortgage and the indebtedness thereby secured, with all instruments evidencing or securing the same, or shall convey to the Company any estate lawfully vested in the Insured by virtue of foreclosure of the mortgage, and all liability of the Company shall thereupon terminate.

Where the Insured, in good faith, shall have entered into an enforceable contract, in writing, to sell the Insured estate or interest, and the title shall have been rejected because of some defect or incumbrance not excepted in this policy, and notice in writing of such rejection shall have been given to this Company within ten days thereafter, for thirty days after receiving such notice this Company shall have the option of paying the loss, of which the Insured must present proper proof, or of maintaining or defending either in its own name or at its option in the name of the Insured some proper action or proceeding,

begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title, and only in case of a final determination is made in such action or proceeding, sustaining the objection to the title, shall this Company be liable on this policy.

If this policy covers a mortgagee's interest only, discharge of the mortgage, otherwise than through foreclosure thereof, or by deed in lieu of foreclosure, shall terminate this policy and all liability of the Company hereunder; but if any Insured acquires said land, or any part thereof, by foreclosure or in any other legal manner in satisfaction of said mortgage indebtedness, or any part thereof, then this policy shall continue in force in favor of such Insured and each successor in interest in ownership subject to all of the conditions and stipulations hereof applicable to an owner of land.

Nothing contained in this policy shall be construed as an insurance against defects or incumbrances created subsequent to the date hereof.

EXHIBIT F

Title and Trust Company
Title and Trust Building
325 S.W. Fourth Avenue
Portland 4, Oregon

(Duplicate)

Owner's Title Insurance Policy

\$125,000.00 Premium \$430.00 No. HR12-987

For value, Title and Trust Company, a corporation (incorporated under the laws of the State of Oregon and duly authorized by the State Insurance Commissioner to insure titles in said state), hereinafter called the Company,

Does Hereby Insure

subject to the annexed conditions, hereby made a part of this policy,

Chet L. Parker

heirs and devisees (or if a corporation, its successors) hereinafter called the Insured, against loss or damage not exceeding One Hundred Twenty-five Thousand Dollars, which the Insured may sustain by reason of any defects in or unmarketability of the Insured's title to all the estate or interest in the premises specified and hereinafter described or by reason of liens or incumbrances charging the same at the date of this policy, saving and excepting, and this policy does not insure against loss or damage by reason of any estate or interest, defect, lien, in-

cumbrance or objection hereinafter set forth in annexed Schedule B.

Any loss under this policy is to be established in the manner provided in said conditions and shall be paid upon compliance by the Insured with and as prescribed in said conditions, and not otherwise.

In Witness Whereof Title and Trust Company has caused these presents to be duly signed by its President or Vice-President, attested by its Secretary or Assistant Secretary and its corporate seal affixed this 12th day of September, 1951, at 8:00 o'clock a.m.

TITLE AND TRUST
COMPANY,

By /s/ FRANKLIN G. GRIFFITH,
President.

Attest:

/s/ EDW. E. MILLER, JR.,
Assistant Secretary.

Schedule A

(Duplicate)

The Estate or interest covered by this policy:

Fee simple estate.

Description of the tract of land the title to which is insured by this policy:

That tract of land in the County of Hood River and State of Oregon, described as follows:

Government Lot 1 and the Northeast quarter of the Northwest quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian; Saving and Excepting Therefrom, the following described tract of land: Starting at the existing Meander corner at the intersection of the Section line between Sections 9 and 16, Township 1 South, Range 8 East, of the Willamette Meridian, with Lost Lake as set by the General Land Office and now being in nine inches of water, and then following in a Southwesterly direction along the meander line of Lost Lake to a 1-inch iron pipe set in the edge of the water, which point may also be reached by starting from said Meander corner and running thence West $43^{\circ} 30'$ South a distance of 100 feet to a point, thence West $42^{\circ} 30'$ South a distance of 100 feet to a point, thence West $38^{\circ} 10'$ South a distance of 100 feet to a point, thence West $38^{\circ} 40'$ South a distance of 100 feet to a point, thence West $32^{\circ} 10'$ South a distance of 100 feet to a point, thence West $30^{\circ} 30'$ South a distance of 100 feet to the said 1-inch iron pipe set in the edge of the water on the shore line of Loast Lake, which 1-inch iron pipe is the true place of beginning for the land hereby excepted (and which said pipe has a 5-inch live cedar bearing tree bearing West $16^{\circ} 00'$ North a distance of 22.05 feet and a 14-inch dead cedar bearing tree bearing West $07^{\circ} 40'$ South a distance of 26.25 feet), thence West a distance of 200 feet to a 1-inch iron pipe (having a live Hemlock bearing tree 36 inches in diameter bearing South $07^{\circ} 00'$ West a distance of 6.42 feet and a white fir bearing tree 8 inches in

diameter bearing East $25^{\circ} 00'$ North a distance of 13.17 feet), thence South a distance of 286.12 feet to a point, thence West a distance of 137.84 feet to a 1-inch iron pipe (having a live cedar bearing tree 24 inches in diameter bearing South $09^{\circ} 00'$ West a distance of 3.33 feet), thence South $58^{\circ} 30'$ West a distance of 425 feet, more or less, to a point on the West line of said Government Lot One which is 350 feet North of that 1-inch iron pipe set on the West line or southern extension of the West line of said Government Lot One and is 1320 feet South of the Northwest corner of said Lot One, thence South 350 feet, more or less, to the Southwest corner of said Lot One, thence East along the South line of said Government Lot One a distance of 848 feet, more or less, to the meander line of Lost Lake, thence in a Northerly direction following the meander line of Lost Lake a distance of 900 feet, more or less, to the place of beginning.

Schedule B

(Duplicate)

This policy does not insure against:

1. Any state of facts which an accurate survey and inspection would show; roads, ways, and easements not established of record; the existence of county roads; water rights and water locations.

2. Rights or claims of persons in possession, or claiming to be in possession, not shown of record; material or labor liens of which no notice is of record.

3. Matters relating to assessments preceding the same becoming fixed and shown as a lien; taxes not yet payable; matters relating to vacating, opening or other changing of streets or highways preceeding the final termination of the same.

4. Provisions and effect of any law or ordinance enacted for the purpose of regulating occupancy or use of said land or any building or structure thereon.

5. The 1951-52 taxes, \$27.02.

6. No means of ingress and egress to and from these premises by any public road or highway or by any private easement of record.

7. Reservations contained in deed from Ethel Winans to Chet L. Parker, recorded September 11, 1951, in Book 46 under instrument No. 80451, Deed Records Hood River County.

Conditions

(Duplicate)

Upon receipt of notice of any defect, lien or incumbrance hereby insured against, the Insured shall forthwith notify the Company thereof in writing. In case any suit, action or proceeding is commenced to which the Insured is a party and which may result in loss under this policy, the Insured shall immediately after learning thereof notify the Company in writing, and within ten (10) days after service of process upon him secure to the Company the right to defend such suit, action or proceeding in the name

of the Insured, so far as necessary to protect the Insured, and shall render all reasonable assistance in such defense. The Company will defend such suit, action or proceeding at its own cost, reserving, however, the option of settling the claim or paying this policy in full at any time. But the Company shall in no case be liable for any costs or expense incurred by the Insured in such litigation without its consent.

In the event of final judicial determination by a Court of competent jurisdiction, under which the Insured is dispossessed or deprived of the real estate covered hereby, or his estate or interest insured is impaired by reason of any adverse interest, lien or incumbrance hereby insured against, or, if this policy covers a mortgagee's interest, if such final judicial determination shall defeat or impair the mortgagor's title to all or any part of the mortgaged premises or establish the priority to the mortgage of a lien or incumbrance not excepted in this policy, claim may be made hereunder, provided, the conditions have been in all ways complied with. Every claim for loss under this policy must be in writing, giving a full statement thereof, and be delivered to the Company at its Home Office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.

The Company may at any time pay this policy in full, whereupon all liability of the Company shall terminate. The total liability under this policy, ex-

clusive of costs, shall in no case exceed the face of the policy, and every payment of the Company shall reduce the policy by the amount paid. When the Company shall have paid a loss under this policy it shall be subrogated to all rights and remedies which the Insured may have against any person or property in respect of such claims, or would have if this policy had not been issued, and the Insured shall forthwith transfer all such rights to the Company accordingly. If the payment made by the Company does not cover the loss of the Insured, then such subrogation of the Company shall be proportionate. Or, the Company may, in case this policy covers a mortgagee's interest only, pay the Insured the entire mortgage indebtedness, with interest at the rate specified in the mortgage and thereupon the Insured shall assign and transfer to the Company the mortgage and the indebtedness thereby secured, with all instruments evidencing or securing the same, or shall convey to the Company any estate lawfully vested in the Insured by virtue of foreclosure of the mortgage, and all liability of the Company shall thereupon terminate.

Where the Insured, in good faith, shall have entered into an enforceable contract, in writing, to sell the Insured estate or interest, and the title shall have been rejected because of some defect or incumbrance not excepted in this policy, and notice in writing of such rejection shall have been given to this Company within ten days thereafter, for thirty days after receiving such notice this Company shall

have the option of paying the loss, of which the Insured must present proper proof, or of maintaining or defending either in its own name or at its option in the name of the Insured some proper action or proceeding, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title, and only in case of a final determination is made in such action or proceeding, sustaining the objection to the title, shall this Company be liable on this policy.

If this policy covers a mortgagee's interest only, discharge of the mortgage, otherwise than through foreclosure thereof, or by deed in lieu of foreclosure, shall terminate this policy and all liability of the Company hereunder; but if any Insured acquires said land, or any part thereof, by foreclosure or in any other legal manner in satisfaction of said mortgage indebtedness, or any part thereof, then this policy shall continue in force in favor of such Insured and each successor in interest in ownership, subject to all of the conditions and stipulations hereof applicable to an owner of land.

Nothing contained in this policy shall be construed as an insurance against defects or incumbrances created subsequent to the date hereof.

EXHIBIT G

August 13, 1951.

For the full sum of \$25,000.00 (twenty-five thousand dollars) which is hereby acknowledged, I assign all my right, title and interest in that certain option between myself as Buyer, and Ethel Winans, et al., with Paul Winans acting as agent, to Chet L. Parker.

The property valuation on the described property is as follows:

NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 16, Twp. 1 S., R.

8 E., W.M.\$ 90,000.00

25.88 acs., Lot 1, Sec. 16, Twp. 1 S., R.

8 E., W.M. 35,000.00

\$125,000.00

WALTER STEGMANN.

EXHIBIT H

Notice of Election to Purchase

Hood River, Oregon.

August 18, 1951.

Paul Winans, Agent,

Ethel Winans, et al.

This will serve to notify you that I herewith elect to purchase the real property situated in Section 16, Township 1 South; Range 8 East, W. M. as set

out and described in that certain option granted to me by yourselves on date of August 11, 1951, in consideration of payment of the total purchase price of \$100,000 (One Hundred Thousand Dollars), to be paid to you at the time and dates as specified under the terms of said option.

WALTER STEGMANN.

Acknowledgment of Notice

Walter Stegmann,
RFD, No. 3,
McMinnville, Oregon.

Receipt of your check of even date hereof in the amount of \$4000.00 (Four Thousand Dollars), subject to collection together with notice constituting your election to purchase is hereby acknowledged.

It is further mutually understood and agreed that time period for measuring and staking out 8.88 acres to be retained by the Sellers is hereby extended date of on or before August 26, 1951.

PAUL WINANS,
ETHEL WINANS.

Approved:

WALTER STEGMANN.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

[Title of District Court and Cause.]

ANSWER AND COUNTERCLAIM OF DEFENDANTS PARKER TO AMENDED COMPLAINT

Come Now the defendants Chet L. Parker and Lois M. Parker and in answer to plaintiff's amended complaint, admit, deny and allege:

I.

These answering defendants admit the allegations of paragraphs I, II, III and IV of said amended complaint.

II.

Answering the allegations of paragraph V of said amended complaint, these defendants admit that the statute referred to therein may be construed as set forth in said paragraph, but that the legal conclusion claimed by plaintiff is subject to exceptions.

III.

These answering defendants admit the allegations of paragraph VI of said amended complaint.

IV.

Answering the allegations of paragraph VII, these answering defendants admit that Exhibit A attached to said amended complaint discloses a United States Government survey of a portion of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian and deny the remaining allegations of said paragraph VII.

V.

These answering defendants admit the allegations of paragraphs VIII and IX of said amended complaint.

VI.

Answering the allegations of paragraph X, these defendants admit that the matters set forth in paragraphs VII, VIII and IX are not matters of record in such of the official records of Hood River County, Oregon, in which documents affecting title to real property are placed of record, pursuant to the recording act of the State of Oregon, and deny the remainder thereof.

VII.

Defendants admit the allegations of paragraphs XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII and XXIV of said amended complaint, except those allegations in which it is alleged that defendant Walter Stegmann was an agent of these defendants, or either of them, which allegations these defendants deny.

VIII.

These defendants deny each and every allegation, matter and thing contained in paragraphs XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV and XXXVI of said amended complaint, except they admit that they did not advise plaintiff respecting the claim of ownership of the United States prior to the time they received their owner's title insurance policy, they themselves having no notice thereof until notified of said fact by plaintiff.

IX.

These defendants deny the allegations of paragraph XXXVII of said amended complaint.

X.

These defendants admit that prior to September 10, 1951, they did not give written notice to plaintiff respecting said defect and deny the remaining allegations of paragraph XXXVIII.

XI.

These defendants have not sufficient knowledge or information on which to form a belief regarding the allegations of paragraph XXXIX of said amended complaint and therefore deny the same.

XII.

These defendants deny the allegations of paragraph XL of said amended complaint.

XIII.

These defendants deny the allegations of paragraph XLI of said amended complaint.

XIV.

These defendants deny the allegations of paragraph XLII of said amended complaint.

XV.

On information and belief, these defendants admit the allegations of paragraphs XLIII, XLIV, and XLV of said amended complaint.

XVI.

These defendants admit the allegations of paragraphs XLVI and XLVII of said amended complaint except they deny that there were any express representations respecting the sufficiency of the option referred to therein and also deny that at the time of the purchase of said option there was any agreement that the consideration therefor included the extinguishment of certain financial obligations; and allege they have not sufficient knowledge or information on which to form a belief respecting the solvency or insolvency of defendant Stegmann at said time.

XVII.

These defendants admit the allegations of paragraphs XLVIII, XLIX and L of said amended complaint.

XVIII.

Answering the allegations of paragraphs LI and LII, these defendants deny the basis upon which the consideration for the assignment was determined was otherwise than by arm's length negotiations or that the purpose of these defendants in purchasing the same was other than to endeavor to make a profit upon a resale.

XIX.

Answering the allegations of paragraph LIII, these defendants have not sufficient knowledge or information on which to form a belief as to whether defendant Stegmann had knowledge of the unmarketability of the title to Lot 2, deny that there were any express representations with respect to

said title; admit that Stegmann did not advise these defendants with respect to the claim of ownership by the United States.

XX.

Answering the allegations of paragraph LIV, these defendants say that they purchased said option in reliance upon their bona fide belief that they would obtain good title to the property described therein and on such assumption paid the consideration therefor.

XXI.

Answering the allegations of paragraph LV, these defendants state that they made the payments therein set forth in reliance on plaintiff's preliminary report and purchaser's title insurance policy and upon their belief that they would obtain good title to said Lots 1 and 2, and deny the remaining allegations of said paragraph LV.

XXII.

Answering the allegations of paragraphs LVI and and LVII, these defendants admit that plaintiff has suffered damage but have not sufficient knowledge or information on which to form a belief as to whether conduct of defendants, fraudulent or otherwise, was a cause thereof, and deny the remaining allegations of said paragraphs LVI and LVII.

XXIII.

Defendants admit the allegations of paragraphs LVIII and LIX of said amended complaint.

XXIV.

Answering the allegations of paragraph LX, these defendants admit that there are some common disputed questions of fact and law in the controversies between plaintiff and the Parkers and between plaintiff and Stegmann, and deny the remaining allegations of said paragraph.

XXV.

These defendants admit the allegations of paragraph LXI.

Counterclaim

Further answering plaintiff's amended complaint and as a counterclaim against plaintiff, defendant Chet L. Parker alleges:

I.

This defendant and counterclaimant is a resident of the State of Washington, and plaintiff is a corporation organized and existing under the laws of the State of Oregon and diversity of citizenship exists between plaintiff and this defendant.

II.

The amount in controversy between plaintiff and defendant involved in this counterclaim exceeds the sum and value of \$3,000.00, exclusive of interest and costs.

III.

On or about the . . day of August, 1951, this defendant applied to the plaintiff for a title report covering the real property described in plaintiff's complaint. referred to therein as Lots 1 and 2.

IV.

Pursuant to said application, plaintiff, on or about August 15, 1951, delivered to said defendant its preliminary report and said defendant paid to plaintiff the sum of \$25.00 as consideration therefor, that a copy of said preliminary report is attached to plaintiff's amended complaint marked Exhibit D.

V.

Thereafter and on or about September 4, 1951, pursuant to an application therefor made by said defendant on August 30, 1951, plaintiff executed and delivered to this defendant its purchaser's policy of title insurance insuring defendant against loss arising by reason of any defect in the title to said Lots 1 and 2 of defendant Ethel Winans, with certain exceptions set forth therein and none of said exceptions had any reference to any claim whatsoever of the United States of America. A true copy of said title insurance policy is attached to plaintiff's amended complaint marked Exhibit E, and by reference thereto is hereby made a part hereof. On August 30, 1951, said defendant paid to plaintiff the sum of \$405.00 in payment of the balance of the premium on said policy of title insurance.

VI.

In reliance upon said title report and upon said purchaser's policy of title insurance, this defendant purchased the real property described therein and on September 11, 1951, paid to defendant Ethel Winans the sum of \$95,000.00, receiving a refund

of \$4,750.00 for property excepted from the conveyance.

VII.

On or about the 11th day of September, 1951, this defendant advised plaintiff that he had obtained a conveyance of said tracts and desired an owner's policy of title insurance, and pursuant to said request on the 14th day of September, 1951, defendant exchanged said purchaser's policy of title insurance for an owner's policy of title insurance executed and delivered to him by plaintiff, a copy of which said owner's policy of title insurance is attached to plaintiff's amended complaint marked Exhibit F and is hereby made a part of this answer and counterclaim. Immediately prior to said exchange and the delivery of said owner's policy of title insurance to this defendant, plaintiff advised this defendant that it had learned that the United States Government claimed title to said Lot 2.

VIII.

This defendant paid to plaintiff in full payment of the premium for said title insurance policies the sum of \$430.00, which said sum was paid to and accepted and retained by plaintiff in full payment of said premium prior to the 11th day of September, 1951.

IX.

On or about the 27th day of September, 1951, this defendant was notified by the United States of America through its Department of Agriculture, Forest Service, that said Lot 2 had never passed

from federal ownership, was a part of the Mt. Hood National Forest, and was the property of the United States of America.

X.

Immediately after receiving said notification from the United States of America, defendant gave notice thereof to plaintiff. Thereafter, certain negotiations were had between plaintiff and defendant and on or about the 23rd day of October, 1951, this defendant, Chet Parker, made demand upon plaintiff for the payment of \$125,000.00 under said policy and this defendant alleges that said sum is less than the full amount of this defendant's loss, and is the amount of said loss within the limits of said policy arising by reason of the lack of title to said Lot 2.

XI.

Said real property, referred to in plaintiff's complaint as Lot 2, is of a reasonable value in excess of \$125,000.00 and defendant's loss and damage under and by reason of the aforesaid breach of the terms of said policy of title insurance is the full sum of \$125,000.00.

XII.

This defendant has performed each and all the terms, covenants and conditions on his part to be kept and performed but notwithstanding repeated demands, plaintiff has refused and does still refuse to pay to this defendant said sum of \$125,000.00 and there is now due and owing and wholly unpaid from plaintiff to defendant the sum of \$125,000.00 with

interest thereon at the rate of 6% per annum from the 27th day of September, 1951, until paid.

XIII.

The sum of \$12,500.00 is a reasonable sum to be allowed this defendant as an attorney's fee in this action.

Wherefore, defendants Chet L. Parker and Lois M. Parker pray that the Court determine and finally adjudicate the title to said Lot 2, whether the same is in the United States of America or in defendant Chet L. Parker; and in the event the court determines that said title is in the United States of America, that judgment be granted to defendant Chet L. Parker against plaintiff in the sum of \$125,000.00 together with interest thereon at the rate of 6% per annum from the 27th day of September, 1951, until paid, together with the further sum of \$12,500.00 attorney's fees and his costs and disbursements incurred herein.

These answering defendants pray for such other and further and different relief as to the Court shall seem just and equitable.

CAKE, JAUREGUY & TOOZE,

By /s/ NICHOLAS JAUREGUY,
Attorneys for Defendants Chet L. Parker and Lois
M. Parker.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

In the District Court of the United States,
for the District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,
Plaintiff and Third-Party Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and
WALTER STEGMANN,

Defendants,

vs.

PAUL WINANS, ETHEL WINANS, ROSS M.
WINANS, AUDUBON WINANS, and LIN-
NAEUS WINANS,

Third-Party Defendants.

THIRD-PARTY COMPLAINT

Comes now the plaintiff and for cause of action
against the third-party defendants, alleges:

I.

Plaintiff has filed an Amended Complaint against
defendants Chet L. Parker, Lois M. Parker and
Walter Stegmann, a copy of which is hereto an-
nexed, marked Exhibit I and incorporated herein,
the same as though fully set forth.

II.

That defendants Chet L. Parker and Lois M.

Parker have filed an Answer and Counterclaim against plaintiff, a copy of which is hereto annexed, marked Exhibit J and incorporated herein, the same as though fully set forth.

III.

That the third-party defendants Paul Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans are sons and daughter of W. R. Winans and Mary Winans, husband and wife, deceased, and have claimed an interest in the property described in said Amended Complaint between the dates December 29, 1943, and September 11, 1951, and have received portions of the purchase price for said property paid by Parkers.

IV.

That plaintiff is advised that the sum of \$12,500 of the total purchase price paid to Paul Winans and and Ethel Winans as hereinafter described, has been distributed to other individuals not made a party hereto and that the interest of said individuals is derivative of and subject to the interest of Paul Winans and Ethel Winans herein.

V.

That Paul Winans was acting on behalf of himself and of the third-party defendants Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans in connection with the negotiations which led up to and culminated in the sale of said Lot 1 and Lot 2 and the delivery of the deed there-

for on September 11, 1951, as hereinafter described and so acted with the knowledge and consent of said named members of Winans family.

First Count—Fraud

VI.

That during the negotiations leading up to the grant of the option set forth in Exhibit C, third-party defendants represented to Stegmann that they had a good marketable title to Lot 2.

VII.

That on or about August 13, 1951, Stegmann assigned said option to Parkers for a valuable consideration by an instrument in writing annexed to said Amended Complaint, marked Exhibit G. That on or about August 18, 1951, written notice of election to exercise said option and purchase the property covered thereby was given third-party defendants and the \$4,000.00 payment provided therein paid at said time, and that on September 11, 1951, Parkers caused the balance of the purchase price of the property covered by said option less the sum of \$4,750.00 which was agreed upon between Parkers and third-party defendants as the value of the additional acreage reserved by the latter, to be paid to the third-party defendants, to wit: the sum of \$90,250.00 and received therefor the deed, a copy of which is annexed to said Amended Complaint, marked Exhibit B.

VIII.

That during all of the times set forth in the

preceding paragraph, third-party defendants represented to Parkers and/or Stegmann as the agent of Parkers that Ethel Winans had a good marketable title to the said Lot 2 and made said representations with the intent that Parkers and/or Stegmann rely thereon.

IX.

That during all of said times, third-party defendants knew that said representations were false and knew the reasons and facts pertaining to the defect of the title of Ethel Winans to said Lot 2 and to the basis of the claim of the United States to ownership of said property.

X.

That Parkers relied on said representations of the third-party defendants in acquiring said option and in the exercise thereof and in the purchase of said property and did not learn or know of the defect in the title to Lot 2 until after the final payment of the purchase price and the receipt of the deed therefor.

XI.

That the agreed valuation of Lot 1 as between Parkers and third-party defendants was the sum of \$35,625.00 and that Parkers acquired good title to said Lot 1.

XII.

That Parkers and thereby plaintiff were damaged on account of said defect in title to Lot 2 and said fraudulent misrepresentations in the sum of \$.

Second Count

Abatement of Purchase Price on Account of Fraud

XIII.

That there was a total failure in the title of Ethel Winans to Lot 2 and it would be inequitable and constitute unjust enrichment to permit third-party defendants to retain the whole of the consideration paid for the conveyance of both lots.

XIV.

That third-party defendants, and Parkers agreed that the value of Lot 1 was the sum of \$2,375.00 per acre and that the value of the portion of Lot 1 acquired by the Parkers was the sum of \$.....

XV.

That a just basis for the proportionate abatement of the total purchase price is the total consideration paid Winans family less the value of Lot 1 as set forth above, to wit: \$35,625.00 which is the sum of \$.....

Third Count

Abatement of Purchase Price on Account
of Mutual Mistake

XVI.

That during all of the negotiations leading up to the grant of said option, the exercise thereof and the purchase of said property and delivery of the deed therefor, third-party defendants represented to

Stegmann and to Parkers and/or to Stegmann as Parkers' agent, that the United States of America had asserted some claim of ownership to Lot 2 which was inconsequential and minor and without basis in fact and that the title to said Lot 2 could be easily perfected and intended that Stegmann and Parkers rely thereon.

XVII.

That Parkers relied on said representations, believed that they were true and was mistaken as to the fact that the United States owned said Lot 2 and that third-party defendants either knew said representations were false or in the alternative were mutually mistaken with Parkers as to the truth thereof.

Plaintiff's Claims for Declaratory Judgment and Relief

XVIII.

That plaintiff claims a right to indemnity in whole or part from Stegmann and/or third-party defendants for any loss or damage for which it might be held liable to Parkers.

XIX.

That there are common disputed questions of fact and law in the controversy between plaintiff and Parkers and the controversy between plaintiff and Stegmann and third-party defendants, which common questions of fact and law include the following:

(a) What is the legal effect of the grant of subject option and the exercise thereof.

(b) Whether Stegmann, in acquiring said option, was acting in his own behalf or as an agent for an undisclosed principal which was defendant Chet L. Parker.

(c) Whether or not, after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal who was defendant Chet L. Parker, or as an agent for a disclosed principal, defendant Chet L. Parker, with limited authority, which limitation was known to third-party defendants.

(d) What was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

(e) What is the extent of the defect in or failure of title to Lot 2.

(f) What was the total amount of the loss or damage sustained by Parkers as a result of said defect or failure.

(g) What portion of said loss or damage is covered under said purchaser's or owner's policy of title insurance and recoverable by Parkers from plaintiff.

(h) What was the reasonable market value of Lot 2 and what was the reasonable market value of Lot 1 less the reserved acreage at the time of subject transaction.

(i) What would be a just basis of abatement of a portion of the purchase price of said option and Lots 1 and 2 and of the purchase price for the assignment of said option.

(j) Whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

(k) Whether or not Stegmann disclosed to Parkers his knowledge relative to the defect in title to Lot 2 and the prior claim of loss under the Pacific Abstract Title Company insurance policy.

XX.

That by reason of the foregoing, a bona fide justifiable controversy exists between plaintiff and third-party defendants.

Wherefore, in the event that the court awards defendants Chet L. Parker and Lois M. Parker judgment on their counterclaim against plaintiff herein, plaintiff prays that the court make and enter a judgment herein as follows:

1. Declaring that upon the exercise of the option set forth in Exhibit A attached to said Amended Complaint by the giving of Notice of Election to Purchase and the payment of the second installment of the purchase price provided in said option, a binding executory contract of sale was created under which the sellers agreed to sell and convey marketable title to Lots 1 and 2, and the buyers

agreed to purchase same according to the terms thereof.

2. Declaring whether Stegmann in acquiring said option was acting in his own behalf or as an agent for an undisclosed principal, Chet L. Parker.

3. Declaring whether or not after the assignment of said option to Chet L. Parker, Stegmann acted as an agent for an undisclosed principal, Chet L. Parker, or as an agent for a disclosed principal, Chet L. Parker, with limited authority, and if the latter, whether or not the limitation on authority was known to Paul and Ethel Winans.

4. Declaring what was the reasonable market value of the consideration paid by Parker to Stegmann for the assignment of said option.

5. Declaring what estate, title or interest in Lot 2 was conveyed to Chet L. Parker under the conveyance set forth in Exhibit B.

6. Declaring and determining what was the total amount of the loss or damage sustained by Parkers as a result of said defect in or unmarketability of the title to Lot 2.

7. Declaring and determining what was the reasonable market value of the estate, title or interest in Lot 2 conveyed to defendant Chet L. Parker by said deed set forth in Exhibit B and what was the reasonable market value of Lot 1 less the reserved acreage at the time of said conveyance.

8. Declaring and determining what would be a just basis for abatement of a portion of the purchase price for Lots 1 and 2 under said option and of the purchase price or consideration paid for the assignment of said option.

9. Declaring and determining whether or not Ethel and Paul Winans disclosed to Stegmann and/or Parkers their knowledge relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

10. Declaring and determining whether or not Stegmann disclosed to Parker his knowledge, if any, relative to the defect in the title to Lot 2 and the prior claim of loss under the title insurance policy issued by Pacific Abstract Title Company.

11. Declaring and determining the extent, if any, to which defendants Chet L. Parker and Lois M. Parker are entitled to participate in any subrogation recovery of plaintiff against third-party defendants.

12. Awarding plaintiff judgment against third-party defendants Paul Winans and Ethel Winans in an amount equal to the judgment entered in favor of Parkers and against plaintiff, conditioned only upon the payment thereof by plaintiff to Parkers.

13. In the alternative, should the court deny the prayer set forth in prayer 12 above, then for judgment in favor of plaintiff and against the third-party defendants Paul Winans and Ethel Winans

in an amount equal to the proportionate abatement of the purchase price paid for said Lots 1 and 2 as determined by the court hereunder, which judgment to be conditioned upon prior payment by plaintiff to Parkers thereof.

14. Determining and declaring the respective portions of the total purchase price paid to Paul Winans and Ethel Winans for said Lots 1 and 2 subsequently distributed to the other named third-party defendants and awarding plaintiff judgment against said last referred to third-party defendants in an amount not exceeding the portion of said purchase price received by them and which judgment should be proportioned in accordance with the determination of the court under the last two prayers herein.

15. Awarding plaintiff such further and equitable relief as to the court may seem proper, together with its costs and disbursements herein.

GRIFFITH, PHILLIPS &
COUGHLIN,

By /s/ JAMES K. BUELL,
Attorneys for Plaintiff and
Third-Party Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

[Title of District Court and Cause.]

THIRD-PARTY DEFENDANTS' ANSWER,
COUNTER-CLAIM AGAINST THIRD-
PARTY PLAINTIFF, AND CLAIM
AGAINST DEFENDANTS

Come now the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, and in answer to the complaint of the third-party plaintiff allege as follows:

I.

Admit the allegations of paragraphs I, II, III and IV of said amended complaint.

Deny the allegations of paragraph V of said amended complaint and for the meaning and effect of said Act of Congress refer to the same.

Admit the allegations of paragraph VI of said amended complaint.

Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs VII, VIII and IX of said amended complaint and therefore deny the same.

Deny the allegations of paragraph X of the amended complaint except admit and aver that the matters set forth in paragraphs VII, VIII and IX are now shown in the public deed records of Hood River County, Oregon.

Admit the allegations of paragraph XI of said amended complaint except deny that the deed by Ethel Winans, referred to in sub-paragraph 4, was made, executed and delivered to Chet L. Parker.

Admit the allegations of paragraphs XII, XIII, XIV and XV of said amended complaint.

Deny each and every allegation of paragraph XVI of said amended complaint except admit that on Saturday, August 11, 1951, Paul Winans and Ethel Winans executed and delivered to the defendant Walter Stegmann a document entitled "Option."

Admit the allegations of paragraph XVII of said amended complaint.

Deny each and every allegation of paragraph XVIII of said amended complaint except admit and aver that on or about August 18, 1951, the defendant Walter Stegmann met with the third-party defendants Paul Winans and Ethel Winans and personally executed a document drawn by Paul Winans whereby Stegmann gave notice of his election to purchase said Lots 1 and 2 in accordance with said option of August 11, 1951, and in connection therewith the defendant Stegmann delivered his personal check in the sum of \$4,000.00; and that at said time and place the defendant Stegmann, unknown to third-party defendants, was acting as the duly authorized agent for an undisclosed principal, which undisclosed principal was the defendant Chet L. Parker.

Admit the allegations of paragraph XIX of said amended complaint.

Deny each and every allegation of paragraph XX of said amended complaint.

Admit the allegations of paragraph XXI of said amended complaint except deny knowledge or in-

formation sufficient to form a belief as to the date of delivery of said policy of owner's title insurance.

Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs XXII and XXIII of said amended complaint and therefore deny the same.

Deny each and every allegation of paragraph XXIV of said amended complaint except admit that the answering third-party defendants knew subsequent to January 9, 1944, that the United States claimed ownership of said Lot 2.

Deny the allegations of paragraphs XXV, XXVI and XXVII of said amended complaint except admit and aver that at the time of acquiring said option and at all times thereafter until subsequent to the delivery of the deed on September 11, 1951, the defendant Stegmann unknown to third-party defendants was in fact acting as the duly authorized agent for an undisclosed principal, which undisclosed principal was the defendant Chet L. Parker.

Admit the allegations of paragraph XXVIII of said amended complaint.

Admit the allegations of paragraphs XXIX, XXX, XXXI, XXXII, XXXIII and XXXIV of said amended complaint.

Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs XXXV and XXXVI of said amended complaint and therefore deny the same.

Admit the allegations of paragraph XXXVII of said amended complaint.

Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs XXXVIII, XXXIX, XL and XLI of said amended complaint and therefore deny the same.

Deny each and every allegation of paragraph XLII of said amended complaint.

Deny each and every allegation of paragraphs XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, L, LI and LII of said amended complaint.

Deny each and every allegation of paragraph LIII except admit and aver that the defendant Stegmann knew at all times that the United States claimed ownership of said Lot 2.

Deny each and every allegation in paragraphs LIV, LV, LVI and LVII of said amended complaint.

Admit the allegations of paragraphs LVIII and LIX of said amended complaint.

Deny each and every allegation of paragraphs LX and LXI of said amended complaint, except aver and admit that there are certain controversies between the plaintiff and the defendants.

II.

Answering the counterclaim of the defendant Chet L. Parker, these answering third-party defendants admit the allegations of paragraphs I, II, III, IV and V of said counterclaim.

Deny the allegations of paragraph VI of said counterclaim except admit that the defendant Chet L. Parker relied upon said title report and said

purchaser's policy of title insurance and that the third-party defendant Paul Winans, on September 11, 1951, received a cashier's check in the sum of \$95,000.00 and caused to be delivered a refund of \$4,750.00 for property excepted.

Deny knowledge or information sufficient to form a belief as to the allegations of paragraph VII of said counterclaim except that the plaintiff issued the defendant Chet L. Parker an owner's policy of title insurance in exchange for the purchaser's policy of title insurance previously issued by it and that a copy of said owner's policy of title insurance is attached to plaintiff's amended complaint marked Exhibit "F."

Deny knowledge or information sufficient to form a belief as to the truth or falsity of paragraphs VIII, IX, X, XI, XII and XIII of said counterclaim except admit the allegations in paragraph X that certain negotiations were had between the plaintiff and the defendant and the allegations in paragraph XII that the plaintiff has refused to pay the defendant Chet L. Parker the sum of \$125,000.00.

III.

Deny each and every allegation of paragraph III of the third-party complaint except that the third-party defendants Paul Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans are sons and daughter of W. R. Winans and Mary W. Winans, husband and wife, deceased, and that said third-party defendants have received portions of the purchase price paid for said Lots

1 and 2.

IV.

Deny each and every allegation of paragraph IV of the third-party complaint except admit that the third-party defendant Ethel Winans has distributed the sum of \$12,500.00 from the purchase price received for the sale of said Lots 1 and 2 to other persons not made a party to this action.

V.

Admit the allegations of paragraph V of the third-party complaint.

VI.

Deny each and every allegation of paragraph VI of the third-party complaint.

VII.

Deny each and every allegation of paragraph VII of the third-party complaint except admit and aver that on or about August 18, 1951, the defendant Stegmann personally executed a document drawn by the defendant Paul Winans whereby Stegmann gave notice of his intention to purchase Lots 1 and 2 in accordance with said option of August 11, 1951, and in connection therewith delivered his personal check in the sum of \$4,000.00 and that on or about September 11, 1951, the third-party defendant Paul Winans and his attorney delivered to another attorney, whom the third-party defendant Paul Winans believed to be representing the defendant Stegmann but who had in fact been

retained by the defendant Lois M. Parker acting on behalf of her undisclosed principal, the defendant Chet L. Parker, a deed executed by the third-party defendant Ethel Winans, in which the name of the grantee was left in blank and also a refund check in the sum of \$4,750.00 for additional acreage to be retained which was not provided for in said option of August 11, 1951, in exchange for a cashier's check in the sum of \$95,000.00.

VIII.

Deny each and every allegation of paragraph VIII of the third-party complaint.

IX.

Deny each and every allegation of paragraph IX of the third-party complaint.

X.

Deny each and every allegation of paragraph X of the third-party complaint.

XI.

Deny each and every allegation of paragraph XI of the third-party complaint except admit that the defendant Chet L. Parker acquired a good and marketable title to said Lot 1.

XII.

Deny each and every allegation of paragraph XII of the third-party complaint.

XIII.

Deny each and every allegation of paragraph XIII of the third-party complaint.

XIV.

Deny each and every allegation of paragraph XIV of the third-party complaint.

XV.

Deny each and every allegation of paragraph XV of the third-party complaint.

XVI.

Deny each and every allegation of paragraph XVI of the third-party complaint except admit and aver that the third-party defendants at all times herein mentioned made a full and complete disclosure to the defendant Stegmann concerning the claim of ownership of United States to Lot 2 and the nature and basis thereof, and that a similar disclosure was made to the defendant Chet L. Parker although at the time of the disclosure to the latter it was not known that he was in fact the undisclosed principal who was purchasing said Lots 1 and 2.

XVII.

Deny each and every allegation of paragraph XVII of the third-party complaint.

XVIII.

Admit that the plaintiff claims a right of indemnity but specifically deny that there is any basis therefor.

XIX.

Deny the allegations of paragraph XIX of the third-party complaint except that there may be some common disputed questions of fact and of law in the controversies between the plaintiff and the

defendants Parker and between plaintiff and the defendant Stegmann and the third-party defendants.

XX.

Deny each and every allegation of paragraph XX of the third-party complaint.

Further answering the third-party complaint and as a first separate defense thereto, the third-party defendants allege:

XXI.

At no time did the third-party plaintiff and the third-party defendants have any direct dealing or contact in any way relating to the issuance by the third-party plaintiff to the defendant Chet L. Parker of its preliminary title report, of its policy of purchaser's title insurance, and its policy of owner's title insurance; and the third-party defendants did not have any knowledge subsequent to the recording on September 11, 1951, of the deed to said Lots 1 and 2 that the plaintiff had issued its said report and title policies.

Further answering said third-party complaint and as a second separate defense thereto, the third-party defendants allege:

XXII.

Prior to the issuance of a preliminary title report on said Lots 1 and 2, on or about August 15, 1951, the third-party plaintiff had readily available to it for inspection public records in various offices of the United States and of the State of Oregon from which it could have ascertained the claim of

ownership of the United States to Lot 2; and the third-party plaintiff also had under its possession and control or readily available to it for inspection the files and records of the Hood River Abstract and Investment Company, from which there was readily available to the third-party plaintiff information indicating the claim of ownership of the United States to Lot 2.

Further answering said third-party complaint and as a third separate defense thereto, the third-party defendants allege:

XXIII.

Subsequent to the time that the third-party plaintiff was advised that the United States claimed ownership of Lot 2 and that there had been a settlement of a policy of title insurance previously issued on said Lot 2 to the third-party defendant Ethel Winans by the Pacific Abstract Title Company by reason of said claim, the third-party plaintiff issued to the defendant Chet L. Parker its policy of owner's title insurance in place of its policy of purchaser's title insurance previously issued by it to said defendant Chet L. Parker.

Counterclaim

Further answering third-party plaintiff's amended complaint and as a counterclaim against the third-party plaintiff, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans allege:

I.

The third-party defendant Linnaeus Winans has been and now is engaged in operating a logging business near Hood River, Oregon, in which business it is necessary for him to secure financing. At all times herein mentioned the third-party defendant Paul Winans has been and now is engaged in assisting in the management of said logging business and has also been and is now engaged in the promotion and construction of a housing development near Dee, Oregon, in which business it is essential that he obtain adequate and continued financing.

II.

That the third-party plaintiff has caused to be published and has published in writing false and defamatory statements concerning the third-party defendants, to wit, that the Winans family falsely represented that they were the owners of a marketable title to said Lot 2 and that they failed to disclose to the defendants Chet L. Parker, Lois M. Parker or Walter Stegmann the claim of ownership of the United States to said Lot 2 and the settlement of the policy of title insurance issued to Ethel Winans by the Pacific Abstract Title Company by reason of the said claim of ownership to Lot 2 by the United States.

III.

That said false and defamatory statements were widely published and circulated and appeared in

newspapers in the City of Hood River, Oregon, the home community of the third-party defendants and as a result they have been damaged in their reputation and in their businesses and have been exposed to ridicule, contempt and disgrace, particularly in Hood River, Oregon, and in the surrounding area, all to their damage in the sum of \$70,000.00, and said third-party defendants have been further damaged in the sum of \$20,000.00 by being forced to retain and pay for the services of attorneys to defend them in the present action and to clear their names and reputations of the false and defamatory imputations of dishonesty and double dealing cast upon them by the third-party plaintiff.

IV.

That said defamatory statements were and are in truth and in fact false and were published by the third-party plaintiff wilfully and maliciously or with reckless abandon and with no endeavor whatsoever to check the truth of said defamatory statements; and that by reason thereof the third-party defendants are entitled to exemplary and punitive damages in the sum of \$100,000.00.

Claim Against Defendants Chet L. Parker, Lois M. Parker and Walter Stegmann Alternative to Counterclaim

As a claim against the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann alternative to their claim against the third-party plaintiff, the third-party defendants Paul Winans, Ethel Winans,

Ross M. Winans, Audubon Winans and Linnaeus Winans allege:

I.

At all times herein alleged the third-party defendants are residents of the State of Oregon and the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann are residents of the State of Washington.

II.

At all times herein mentioned the third-party defendant Paul Winans acted on behalf of himself and of other third-party defendants and was known to be so acting by the defendants. At all times herein mentioned the third-party defendant Linnaeus Winans has been and now is engaged in operating a logging business near Hood River, Oregon, in which business it is necessary for him to secure financing. At all times herein mentioned the third-party defendant Paul Winans has been and now is engaged in assisting in the management of said logging business and has also been and is now engaged in the promotion and construction of a housing development near Dee, Oregon, in which business it is essential that he obtain adequate and continued financing.

III.

From July, 1951, until some time subsequent to September 11, 1951, the defendant Walter Stegmann was acting unknown to the third-party defendants as the duly authorized agent for an undisclosed principal which undisclosed principal was the defendant Chet L. Parker; and the defendant

Lois M. Parker was also acting as an agent of said undisclosed principal and particularly on September 10 and 11, 1951.

IV.

During the month of July, 1951, and extending until and including August 11, 1951, the defendant Walter Stegmann negotiated with the third-party defendant Paul Winans for the purchase of Lot 1 and later of Lots 1 and 2; and during the course of said dealings and on later occasions prior to September 11, 1951, the third-party defendant Paul Winans made a full and complete disclosure to the defendant Walter Stegmann concerning the claim of ownership of the United States to Lot 2 and the nature and basis thereof, and also made a full and complete disclosure concerning the settlement of the policy of title insurance issued by the Pacific Abstract Title Company on said Lot 2 as a result of said claim of ownership of the United States to Lot 2. A similar full and complete disclosure was made by Paul Winans to the defendant Chet L. Parker personally before September 11, 1951, although when making said disclosure Paul Winans did not know that the defendant Chet L. Parker was in fact the undisclosed principal who was purchasing Lots 1 and 2.

V.

During the month of July, 1951, and subsequent thereto, the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann entered into and engaged in a conspiracy to defraud the plaintiff and third-party defendants and to defame the names

and reputations of and to damage the third-party defendants in their businesses and reputations.

VI.

Pursuant to said conspiracy and in furtherance thereof said defendants engaged in many activities, to wit:

(a) The defendant Stegmann acquired on behalf of his undisclosed co-conspirators an Option to purchase all of the right, title and interest of the third-party defendants in Lot 1 for the sum of \$80,000.00 and in Lot 2 for the sum of \$20,000.00, with full knowledge as to the previously asserted claim of ownership of the United States to Lot 2 and of the previous settlement of a policy of title insurance issued to Ethel Winans upon said Lot 2 by reason of the claim of the United States, and the defendant Stegmann paid for said option with his personal check in the sum of \$1,000.00.

(b) That on or about August 13, 1951, the defendant Stegmann purportedly executed an assignment of said Option to his co-conspirator Chet L. Parker but said instrument was in fact only a device used by the co-conspirators to raise the agreed purchase price of Lot 2 from \$20,000.00 to \$90,000.00 and to lower the agreed price of Lot 1 from \$80,000.00 to \$35,000.00, and was an artifice used for placing a higher total value on Lots 1 and 2 in order to secure a larger policy of title insurance from plaintiff.

(c) That on the same date the said defendants effected their purported assignment, the defendant Chet L. Parker applied to the plaintiff, in part, for a title report covering said Lots 1 and 2, but in making such application to the plaintiff, the defendant Chet L. Parker, with knowledge and with intent to defraud the plaintiff and the third-party defendants, did not disclose to the plaintiff the facts in his possession relating to the claim of ownership of the United States to Lot 2 and relating to the settlement of the policy of title insurance previously issued by the Pacific Abstract Title Co., which facts were not then matters set out in the public deed records in Hood River County, Oregon, and were not then, as a matter of actual fact, known to the plaintiff and were not so known until after the delivery of its purchaser's policy of title insurance to the defendant Chet L. Parker.

(d) That through such fraudulent non-disclosure, the said defendants were successful in securing the issuance and delivery to the defendant Chet L. Parker by the plaintiff of its title report that the plaintiff was prepared to issue a title insurance policy in the usual form insuring that the title to said Lots 1 and 2 was in Ethel Winans.

(e) That with said title report in their possession, the said defendants were in a position to proceed with their conspiracy and the defendant Walter Stegmann on or about August 18, 1951, met with Paul Winans and Ethel Winans and executed a document giving notice of his election to exercise

his option to purchase Lots 1 and 2, and therewith said defendant delivered his personal check in the sum of \$4,000.00.

(f) That on or about September 4, 1951, the defendant Chet L. Parker secured the delivery from plaintiff of a purchaser's policy of title insurance for Lots 1 and 2, no exceptions being made in said policy with respect to any claim whatsoever of the United States. With said policy in their possession, the said conspirators then engaged an agent to close the purchase of said Lots 1 and 2, and on the morning of September 11, 1951, said agent secured the delivery of a deed to said Lots 1 and 2, the name of the grantee of said deed being left in blank at the time of delivery pursuant to the request of the defendant Walter Stegmann. Subsequent to said delivery and prior to being recorded in the Record of Deeds of Hood River County, Oregon, the name of the defendant Chet L. Parker was inserted as the grantee of said deed.

(g) That having some time thereafter secured the delivery from plaintiff of an owner's policy of title insurance in exchange for his purchaser's policy of title insurance, the defendant Chet L. Parker then notified the plaintiff that the United States claimed the ownership of Lot 2 and has made a claim of loss upon the plaintiff to pay him the sum of \$125,000.00 by reason of said defect in title.

VII.

That pursuant to said conspiracy and in making

said claim of loss to the plaintiff, the defendants Chet L. Parker and Lois M. Parker met and conferred with, on various occasions, agents and officers of the plaintiff, and maliciously and with intention to defame and defraud the third-party defendants, the said defendants told the said agents and officers of the plaintiff in words and by their conduct that the third-party defendants had represented they were the owners and had a marketable title to Lot 2. Said defendants further maliciously and with intention to defame told said agents and officers of the plaintiff that the third-party defendants had failed to disclose their knowledge of the claim of ownership of the United States to Lot 2 and of the settlement of the policy of title insurance on Lot 2 previously issued by the Pacific Abstract Title Company as a result of a claim made under said policy by reason of the previously asserted claim of ownership of the United States to Lot 2.

VIII.

That said defamatory statements made by the said defendants were in fact false and known to be so by the said defendants and were made with the intention and knowledge that the plaintiff would institute legal proceedings against the third-party defendants and that the plaintiff would proceed to publish and spread the false and defamatory statements made by the said defendants concerning the third-party defendants; and the intentions and expectations of the said defendants have in fact been accomplished in that the plaintiff has instituted the

present action in which it has published the charge that the third-party defendants "falsely represented" that they were the owners of a marketable title to Lot 2 and that none of the third-party defendants disclosed to said defendants the claim of ownership of the United States to Lot 2 or the settlement of the policy of title insurance issued by the Pacific Abstract Title Company. The intention and expectations of the said defendants have been further accomplished in that there have been published statements giving wide circulation to the above charges made by the plaintiff.

IX.

As a result of said conspiracy and of the false and defamatory statements made by the said defendants and caused to be published and widely circulated by them, the third-party defendants have been damaged in their reputation and in their businesses and have been exposed to ridicule, contempt and disgrace, particularly in Hood River, Oregon, and in the surrounding area, all to their damage in the sum of \$70,000.00; and said third-party defendants have been further damaged in the sum of \$20,000.00 by being forced to retain and pay for the services of attorneys to defend them in the present action and to clear their names and reputations of the false and defamatory imputations of crime, dishonesty, and double dealing cast upon them by the defendants.

X.

That the said defendants Chet L. Parker and his wife, Lois M. Parker, are persons of wealth and are the owners of land, timber, monies, stocks, bonds and other worldly goods; and that by reason of the malicious and intentional defamatory statements made and caused to be published by them, the third-party defendants are entitled to exemplary and punitive damages in the sum of \$100,000.00.

As an alternative claim against the defendants Chet L. Parker and Lois M. Parker, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans allege:

I.

Reallege the allegations, except omitting any reference to a conspiracy, of paragraphs I, II, III, IV, VII, VIII, IX and X of the claim herein against the defendants Chet L. Parker, Lois M. Parker, and Walter Stegmann, as though here fully set out.

Wherefore, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans pray that the Court dismiss the third-party complaint herein and award them their costs and disbursements and that the Court make and enter a judgment awarding them damages against the plaintiff, Title and Trust Company, or, in the alternative, against the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann, in the sum of \$70,000.00, special damages in

the sum of \$20,000.00, and exemplary and punitive damages in the sum of \$100,000.00, and for such other and further relief as to the Court shall seem just and equitable.

KRAUSE & EVANS,

By /s/ DENNIS J. LINDSAY,

Attorneys for Third-Party Defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans.

Service of copy acknowledged.

[Endorsed]: Filed December 29, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS PARKER TO
CROSS-CLAIM OF DEFENDANTS WIN-
ANS, AND CROSS-CLAIM

Defendants Chet L. Parker and Lois M. Parker answer the cross-claim of third-party defendants Winans as follows:

First Defense

I.

Defendants Parker allege that said cross-claim does not set forth a claim arising out of the transaction or occurrence that is the subject matter either of the original action or of these defendants' counterclaim, nor does it relate to any property that is the subject matter of the original action.

Second Defense

Answering the allegations of the cross-claim of third-party defendants, defendants Parker admit, deny and allege:

I.

Admit the allegations of paragraph I.

II.

Answering the allegations of paragraph II, admit that third-party defendant Paul Winans acted on behalf of himself and other third-party defendants, and was known by these defendants to be acting on behalf of third-party defendant Ethel Winans, that Paul Winans has been engaged in the promotion and construction of a housing development; deny that they have sufficient knowledge or information to form a belief respecting the further allegations of said paragraph II.

III.

Deny the allegations of paragraphs III, IV, V, VI, VII, VIII, IX and X of said cross-claim and the whole thereof, except these defendants admit that prior to September 11, 1951, defendant Walter Stegmann negotiated with third-party defendant Paul Winans for the purchase of said lots 1 and 2, that defendant Chet L. Parker was advised by third-party defendant Paul Winans concerning a policy of title insurance which Ethel Winans had obtained; that on or prior to August 11 Paul Winans and Ethel Winans executed an option in favor of defendant Stegmann and received \$1,000.00 there-

for; that on August 13 defendant Stegmann assigned said option to defendant Chet L. Parker, at which time said parties agreed upon a valuation of Lot 1 in the sum of \$35,000.00 and of Lot 2 in the sum of \$90,000.00, as the relative values of said two parcels of property; that defendant Chet L. Parker obtained from plaintiff a title report and certain title insurance policies; that an attorney, retained by defendant Chet L. Parker for said purpose, obtained a delivery of the bargain and sale deed and delivered a bank cashier's check to defendant Paul Winans as final consideration for the purchase of said property and thereafter secured an owner's title insurance policy.

Answering the allegations of the alternative claim against these defendants set forth on page 17 of the third-party defendants' answer, these defendants refer to the admissions and denials to the allegations of said third parties' first claim against these defendants and make identical admissions and denials to paragraph I of said alternative claim.

Cross-Claim of Defendant Chet L. Parker

Based upon the allegations of plaintiff's complaint and of the counterclaim of defendant, Chet L. Parker, said defendant prays that in the event plaintiff obtains the relief prayed for that said title insurance policy be cancelled, that said defendant Chet L. Parker have and recover of and from defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans judgment

in the sum of \$125,000.00, together with his costs and disbursements incurred herein.

Wherefore, defendants Parker pray that the third-party claim of third-party defendants Winans, et al., be dismissed, and that in the event plaintiff obtains the relief prayed for that said title insurance policy be cancelled, that defendant Chet L. Parker have and recover of and from defendants Paul Winans, et al., judgment in the sum of \$125,000.00, together with his costs and disbursements incurred herein.

CAKE, JAUREGUY & TOOZE,

By /s/ NICHOLAS JAUREGUY,

Attorneys for Defendants
Parker.

Service of copy acknowledged.

[Endorsed]: Filed January 5, 1953.

[Title of District Court and Cause.]

ANSWER OF THIRD-PARTY DEFENDANTS
TO CROSS-CLAIM OF DEFENDANT CHET
L. PARKER

Come now third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans and for answer to the cross-claim of the defendant Chet L. Parker, deny each and every allegation therein contained, except insofar as admitted in said third-party defendants'

answer, counterclaim against the third-party defendant and claim against the defendants Chet L. Parker, Lois M. Parker and Walter Stegmann.

Wherefore, the third-party defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans pray that the cross-claim of the defendant Chet L. Parker be dismissed and that they be awarded their costs and disbursements herein.

KRAUSE & EVANS,

By /s/ DENNIS J. LINDSAY,

Attorneys for Third-Party Defendants Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans.

Service of copy acknowledged.

[Endorsed]: Filed January 7, 1953.

[Title of District Court and Cause.]

STIPULATION

It is Stipulated and Agreed by and between the undersigned that the defendants Chet L. Parker and Lois M. Parker and the defendant Walter Stegmann withdraw and waive their designated "First Defense," set forth in the respective answers of said defendants to the cross-claim of the third-party defendants against them, which First Defense is to the effect that said cross-claim does not set

forth a claim arising out of the transaction or occurrence that is the subject matter of the original action, or of the counterclaim of the defendants Chet L. Parker and Lois M. Parker, nor does it relate to any property that is the subject matter of the original action.

Dated this 9th day of January, 1953.

/s/ NICHOLAS JAUREGUY,
Of Attorneys for Defendants Chet L. Parker and
Lois M. Parker.

/s/ JOHN D. RYAN,
Of Attorneys for Defendant
Walter Stegmann.

/s/ DENNIS J. LINDSAY,
Of Attorneys for Third-Party Defendants Paul
Winans, et al.

[Endorsed]: Filed January 9, 1953.

[Title of District Court and Cause.]

STIPULATION OF ADMITTED FACTS

It is hereby stipulated and agreed by and between plaintiff and defendants and third-party defendants through their respective attorneys of record in the above cause that the following facts are admitted by all of said parties and that no evidence need be given or introduced concerning said facts at the trial of the above cause, and that this stipu-

lation may and shall be introduced into evidence at the time of said trial.

It is further stipulated and agreed between all of the parties hereto that by their admission of the following facts, the parties hereto do not necessarily admit that they had first-hand knowledge thereof at the particular time of occurrence of the transaction, fact, condition or event admitted, or of the details of the occurrence thereof, except as such knowledge is specifically admitted in the following statements of admitted facts:

I.

That plaintiff is a corporation organized under the laws of the State of Oregon and authorized thereby to engage in the business of insuring title to real property.

II.

That defendants, Chet L. Parker and Lois M. Parker, are husband and wife, and at the time of commencement of this action were and now are residents of the State of Washington.

III.

That third-party defendants Paul Winans, Ross M. Winans, Audubon Winans, Linnaeus Winans and Ethel Winans are sons and daughter of W. R. Winans and Mary Winans, husband and wife, deceased, and have received portions of the purchase price paid for the property hereafter described as Lots 1 and 2.

IV.

That at the time of commencement of the above

action, defendant Walter Stegmann was and now is a resident of the State of Washington.

V.

That the amount in controversy between plaintiff and Parkers and between plaintiff and Stegmann in each instance exceeds the sum of \$3,000 exclusive of interests and costs and attorney's fees.

VI.

That by Act of Congress February 14, 1859, 11 Stat. at Large 383, Chapter 33, Section 4, Oregon was admitted as a state of the United States of America.

VII.

That at the time of the admission of the State of Oregon into the United States of America, the following described property was a part of the public lands of the United States of America, and said property had not been sold or otherwise disposed of; and that no patent has been issued on said property by the United States of America:

Defendant Stegmann does not stipulate to the facts set forth in this Paragraph VII.

The Northeast one-quarter of the Northwest one-quarter of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, Hood River County, Oregon. (Hereinafter referred to as "Lot 2.")

VIII.

That claim of ownership of the United States of America to said Lot 2 is not a matter of record in

such of the official records of Hood River County, Oregon, in which documents affecting title to real property are placed of record pursuant to the recording Act of the State of Oregon.

IX.

The following deeds purporting to convey the above described property are shown by the official records of deeds of Hood River County, Oregon, is as follows and none others and that said conveyances set forth below were made, executed and delivered:

1. State of Oregon to Chas. A. Macrum by grant deed dated February 11, 1889, filed of record in Hood River County on April 13, 1907, in Volume L, page 288 of Deeds, and also filed of record in Volume 43, at page 480 of the Deed Records of Wasco County, State of Oregon.

2. C. A. Macrum (an unmarried man) to W. R. Winans by warranty deed dated April 25, 1902, and filed of record in Hood River County, Oregon, on April 26, 1902, in Volume K at page 481 of the Deed Records of Hood River County, Oregon, and also filed of record in Volume 33 at page 595 of the Deed Records of Wasco County, Oregon.

3. W. R. Winans and Mary Winans, husband and wife, to Ethel Winans by bargain and sale deed dated December 29, 1943, and filed of record on December 30, 1943, in Volume 30 at page 405 of the Deed Records of Hood River County, Oregon.

4. Ethel Winans, a single woman, to Chet L. Parker by deed dated September 10, 1951, and filed of record September 11, 1951, Volume 46 of Deeds, Instrument No. 80451 and a copy of which deed is hereto annexed marked Exhibit B, which deed was executed with the grantee's name in blank and delivered with the grantee's name in blank to Kenneth Abrahams, attorney.

X.

That subsequent to February 11, 1889, and to date Hood River County, as a political subdivision of the State of Oregon, has assessed, levied and collected real property taxes, including fire patrol assessments on said Lot 1 and Lot 2 and said taxes were paid from the tax years 1902-1903 through and including 1950-1951 by W. R. Winans and by Ethel Winans or by Paul Winans on their behalf.

XI.

That on or prior to December 30, 1943, third-party defendants Paul Winans and Ethel Winans made application for and on said date the Pacific Abstract Title Company, by the Hood River Abstract and Investment Co., its agent, issued to Ethel Winans a policy of title insurance No. 136-HR-37882 in the face amount of \$8,000.00 insuring a fee simple title in said Lots 1 and 2 in the said Ethel Winans free from all encumbrances, subject to certain exceptions contained and set forth in said policy not material herein.

XII.

Commencing in 1939 said Paul Winans had carried on negotiations with the Forest Supervisor of the Mt. Hood National Forest of the Forest Service, United States Department of Agriculture, for the exchange of said Lots 1 and 2 for certain United States timber lands. Such negotiations continued over the succeeding years until the said Forest Supervisor wrote said Paul Winans a letter, dated January 9, 1944, stating in part, that the United States claimed ownership of said Lot 2 but proposing to proceed with the exchange of said Lot 1. Paul Winans replied by letter dated February 5, 1944, that by virtue of all available records, plats and tax assessments W. R. Winans had been the openly recognized owner of said Lots 1 and 2 and that he was referring the claim of the United States to the Pacific Abstract Title Company under the policy of title insurance made by them. Attorney F. M. DeNeffe was retained to represent third-party defendant Ethel Winans in connection with her rights under said policy of title insurance.

XIII.

That by letter, dated March 3, 1944, drafted by said F. M. DeNeffe and signed by the third-party defendant Ethel Winans, a claim was made against the said Pacific Abstract Title Company under said policy on account of the defect in and the unmarketability of the title of the said Ethel Winans to said Lot 2. On or about April 3, 1944, the said Ethel Winans received the sum of \$3,000.00 from said

company in full settlement and discharge of said claim; and as part of the consideration of said settlement the said company waived all rights and claims of every kind to said Lot 2 as against the said Ethel Winans, her heirs and assigns, the United States, the State of Oregon and to any monies recovered or recoverable from Hood River County by reason of taxes theretofore paid on said Lot 2, and also endorsed on said policy of title insurance its continued liability as to the said Lot 1 in the sum of \$2,000.00.

XIV.

That on Saturday, August 11, 1951, third-party defendants Paul Winans and Ethel Winans, executed and delivered to the defendant Walter Stegmann, a document entitled "Option," a true copy of which is hereto annexed as Exhibit C. Said document was drafted by Paul Winans, and its said execution and delivery was made with the approval of the defendants Ross M. Winans, Audubon Winans and Linnaeus Winans.

XV.

That on August 15 or 16, 1951, plaintiff delivered to defendant Chet L. Parker a preliminary report as to the title of the said Lots 1 and 2 and accepted from him the sum of \$25.00 and that a copy of said preliminary report is hereto attached marked Exhibit D.

XVI.

That on or about September 4, 1951, plaintiff

issued to defendant Chet L. Parker a policy of purchaser's title insurance in the face amount of \$125,000 showing a fee simple title to said Lots 1 and 2 to be in Ethel Winans as of 8 o'clock a.m., August 30, 1951, and that a true copy of said policy of purchaser's title insurance is hereto annexed marked Exhibit E, and that plaintiff on August 30, 1951, accepted from said defendant the sum of \$405.00 in payment of the balance of the premium on said policy of title insurance.

XVII.

That on September 11, 1952, a cashier's check of the First National Bank of McMinnville in the sum of \$95,000.00 was delivered to Paul Winans by Kenneth Abrahams, attorney, and the deed, a copy of which is hereto annexed marked Exhibit B, was delivered to the said Abrahams with the grantee's name left blank, together with a refund check in the sum of \$4,750.00 on account of the additional acreage reserved to the grantor in said deed and not provided for in said Option of August 11, 1951.

XVIII.

That subsequent to September 11, 1951, plaintiff issued to Parkers at their request a policy of owner's title insurance in the principal amount of \$125,000 insuring a fee simple title to said Lots 1 and 2 in Chet L. Parker, subject to certain exceptions not herein material, and a copy of which policy is hereto annexed marked Exhibit F, and that no additional premium was charged or paid

for said owner's policy of title insurance, and that at said time said purchaser's policy of title insurance was surrendered by Parker to plaintiff.

XIX.

That at all times herein mentioned subsequent to January 9, 1944, the third-party defendants knew that the United States claimed ownership of the said Lot 2.

Dated this 29th day of December, 1952.

GRIFFITH, PHILLIPS &
COUGHLIN,

By /s/ JAMES K. BUELL,
Attorneys for Plaintiff and
Third-Party Plaintiff.

CAKE, JAUREGUY & TOOZE,

By /s/ NICHOLAS JAUREGUY,
Attorneys for Defendants Chet L. Parker and Lois
M. Parker.

RYAN & PELAY,

By /s/ JOHN D. RYAN,
Attorneys for Defendant
Walter Stegmann.

KRAUSE & EVANS,

By /s/ DENNIS J. LINDSAY,
Attorneys for Third-Party
Defendants.

EXHIBITS B, C, D, E AND F

“Exhibits B, C, D, E, and F, respectively, referred to in the foregoing Stipulation of Admitted Facts, are attached to the Amended Complaint herein and bear the same identifying exhibit symbol as used in said Stipulation.”

[Endorsed]: Filed January 17, 1953.

[Title of District Court and Cause.]

ORAL OPINION

March 16, 1953.

Title and Trust Company, a corporation, plaintiff and third-party plaintiff, v. Chet L. Parker, et al., defendants, v. Paul Winans, et al., third party defendants. Civ. No. 6242.

Because of the many interesting questions of fact and law involved in this case and because of the paucity of decisional law upon many of the questions involved, I had hoped to prepare a formal written opinion in which I would discuss these questions. However, because of the press of other matters, it will be impossible for me to prepare such a written opinion for at least 60 days. Although a written opinion is desirable, I believe that the interests of the parties will be better served by announcing my decision now, together with some of the reasons therefor.

It is undisputed that Parker paid in excess of \$95,000 for the property involved; that he first

obtained a title report and, later, obtained a purchaser's policy, and finally an owner's policy, from the Title and Trust Company insuring the title to this property; that the defendants, Parker and Stegman, did not make any affirmative representations to the Title Company with reference to the condition of title and that the defect in the title could have been discovered by the Title Company by a proper examination of the statutes and records, all of which were available to it.

Ordinarily, under those circumstances, a title company should be required to respond in damages for a failure of title to property covered by its policy. However, under the unusual facts of this case, I am of the opinion that the Title Company is entitled to an order canceling the title insurance policies issued to defendant Chet L. Parker.

This is not a case of an honest mistake. Neither in their pleadings nor in the evidence adduced at the trial did the Parkers admit that they knew of the defect in title until after the full purchase price had been paid and a deed delivered.

Throughout the case, they, as well as Stegman, maintained that they had no knowledge of the defect in title and that neither the Winans nor anyone else had informed them of the claim of the United States to Lot 2. The testimony of the Parkers and Stegman was not corroborated on any material issue by any credible independent evidence. Their own testimony was shown to be false in many particulars and, when not actually controverted, was highly improbable and, at times, fantastic.

On the other hand, the testimony of Paul Winans was corroborated not only by documentary evidence but also by the testimony of a number of disinterested reputable witnesses.

Among the significant dates upon which there was conflicting testimony is the date of August 13, 1951. Two Forest Service employees testified that, on this date, Parker and Stegman came to the Parkdale Forest Ranger Station, where they examined records concerning the Winans property, and were told that the title to this property was in doubt. Their testimony was corroborated by a contemporaneous office memorandum showing that they had talked to two people. Although both Forest Service employees identified Parker and Stegman in the courtroom as the persons who were there on that day, Parker and Stegman each denied that they were there on that day or that they had ever visited the ranger station together for that or any other purpose.

Even more significant is the date of August 18, 1951. Parker testified to conversations that he had on that day with Paul Winans at the Winans' service station concerning the title to the property and his purchase of the option from Stegman. Stegman corroborated Parker's testimony as to his conversation and Stegman's brother corroborated Parker's testimony as to his presence.

On the other hand, Paul Winans testified that he had no such conversation with Parker and that Parker was not even there on that date. Winans'

testimony was corroborated by two employees of the Army Engineers who, at the request of Winans, were surveying the property in controversy.

The evidence contains numerous other instances in which the testimony of the Parkers and Stegman was diametrically opposed to the testimony of the other witnesses and in practically every instance I have come to the conclusion that the testimony of the Parkers and Stegman was false.

Parker contended that Stegman was not his agent and that he had purchased the option on the Winans' property from Stegman for \$20,000. This is a fantastic story. It starts with an alleged one-year 4% loan by the Parkers to Stegman of \$22,000, delivered to him in currency, and secured by an unrecorded chattel mortgage on old equipment worth considerably less than the amount of the loan. The equipment was not checked and it was not insured against fire or other casualty. The Parkers testified that this alleged loan was made on November 20, 1950, solely for the purpose of earning interest on their surplus money, and that the money was first kept in a safe deposit box and later moved to their home. Stegman allegedly borrowed this amount to enable him to speculate in timber. The Parkers, although constantly in the market for timber, had no agreement with Stegman that they were to be given any preference in the purchase of timber acquired by Stegman with this money.

Other evidence adduced at the trial showed that, during this period, Stegman was financially involved, if not actually insolvent.

Stegman's explanation of how he used this money is equally fantastic. No portion of the money was ever deposited in a bank account or kept in a safe deposit box. \$11,000 was used to rock a road on his father's farm. This amount was paid in cash to a contractor, whose name he does not remember and from whom he did not obtain a receipt.

The testimony of Stegman with reference to the manner in which he used the balance of the loan was equally vague and improbable. In May, 1951, he entered into a \$10,000 credit arrangement with the Parkers to enable him to purchase timber. This arrangement contemplated that Stegman could issue checks as the maker on the First National Bank of McMinnville, Oregon, although he did not maintain an account in that bank. (In fact he did not maintain an account at any bank.) These checks were to be honored by the bank and debited to Parker's account. On August 11, 1951, Stegman, pursuant to such arrangement, issued a check to Ethel Winans for \$1,000 as consideration for the option. The option agreement called for another payment of \$4,000 within 7 days, and another payment of \$95,000 within 90 days.

Parker testified that, on August 12, he first learned about the option from Stegman and that, on the following day, he went to Hood River County to inspect the property. It is not clear whether he ordered the title report immediately before or immediately after he inspected the property. The Parkers testified that, on the same evening, they drove to Stegman's apartment at The Dalles, Ore-

gon, and, after some bargaining, purchased Stegman's option for \$20,000 and, in payment thereof, gave Stegman a check for \$25,000. They explained the discrepancy by testifying that Stegman believed he was getting \$25,000 for the option. He did not realize until later that his agreement to reimburse the Parkers for the \$1,000 check already issued, as well as the \$4,000 check which he would be required to pay on account of the option, would only result in a profit to him of \$20,000. On August 18, Stegman did give Winans a check for \$4,000 drawn on the First National Bank at McMinnville which was honored by that bank and charged to one of Parker's accounts.

In other words, the Parkers gave Stegman, an insolvent, a check for \$25,000, which he was at liberty to cash at any time thereafter, even though they had agreed to pay only \$20,000 for the option and even though they had already paid Stegman's check for \$1,000 and knew that they would have to pay the \$4,000 check which Stegman was required to pay to Winans in order to keep the option alive.

A mere recital of the testimony reveals its improbability and, when it is considered with the other testimony of these same witnesses, it becomes incredible. At the time the Parkers delivered the \$25,000 check to Stegman:

1. Parker had ordered, but not received, the title report.

2. Parker was interested in the property only because of its timber and yet he had made only a cursory examination of that timber.

3. Parker had not talked to any member of the Winans family.

4. The Parkers loaned Stegman \$22,000 in November, 1950, which had not been repaid. On May 1, 1951, the Parkers had entered into the \$10,000 credit arrangement with Stegman to enable Stegman to purchase timber.

5. Stegman did not cash the check but carried it in his pocket until September 19 or 20, 1951, when he endorsed and returned it to the Parkers who, in turn, deposited the check in their own account.

At the deposition Stegman testified that he had cashed the check and used the proceeds to pay bills. Apparently he was "confused" because a short time later, he corrected that statement and, at the trial, he corroborated the testimony of the Parkers that he had returned the check to the Parkers, after Mr. Parker had become angry because of the title defect in the property covered by the option. However, all of them agreed that the check was returned on condition that full credit was to be allowed Stegman on the \$22,000 note and his other indebtedness to the Parkers.

Perhaps it is only a coincidence that September 20, the date upon which the \$25,000 check was deposited in Parker's account, is the same day upon which representatives of the Title Company met

with the Parkers and their attorneys to discuss settlement.

The Parkers and Stegman admitted that they had entered into a few other business transactions among themselves prior to the Winans transaction, but they denied any such business dealings subsequent thereto. However, the evidence conclusively shows that Stegman had been an agent for, or a joint venturer with, the Parkers on many other occasions and that their business relationship did not terminate with this transaction.

During the settlement negotiations with the Title Company, Parker represented that the property cost him \$120,250. I found that he paid \$95,250 but, according to his own testimony, the property did not cost him \$120,250 but only \$115,250 because he paid Stegman \$20,000 for the option.

Although the purchase price covered both Lots 1 and 2, the title defect only affected Lot 2. However, on the basis of negotiations which the Parkers had with Multnomah Plywood in which they offered the entire property for \$180,000, the Parkers claimed that Lot 2 had a reasonable market value of at least \$125,000 and they claimed that amount as damages.

The testimony of the Parkers and Stegman with reference to the \$22,000 loan and the purchase from Stegman of the option for \$20,000, all of which I find is false, not only proves that Stegman was either an agent, or a joint venturer with, the Parkers; but, viewed in the light of the other testimony, shows a conspiracy to defraud the Title Company.

Prior to the time Stegman obtained the option from Winans, the Parkers and Stegman all knew of the claim of the United States to Lot 2. When the Title Company issued its preliminary report and its purchaser's policy, they knew that the Company had overlooked this defect in the title and they knowingly failed to divulge this information for the purpose of perpetrating a fraud on the Title Company.

By making a fictitious sale of the option from Stegman to Parker for \$25,000 (later reduced to \$20,000), they attempted to avoid being chargeable with the knowledge which Stegman had of the defect and, at the same time, to build up the cost to Parker in order to increase his claim for damages if the Title Company discovered the defect prior to the time the property was sold. However, if they were successful in selling the property to Multnomah Plywood or some other purchaser, they could realize a greater profit (\$25,000 of which would be tax free to the Parkers, who were in a high income tax bracket) and the loss to the purchaser, by reason of the title defect, would be borne by the Title Company.

On or about the 4th day of September, 1951, Parker received the purchaser's title insurance policy from the Title Company. At that time, he knew of the defect in the title to Lot 2. Such policy contains the following condition:

“Upon receipt of notice of any defect, lien, or

encumbrance hereby insured against, the insured shall forthwith notify the company thereof in writing."

In my opinion, his failure to notify the company of such defect prior to September 11, the date upon which the balance of the purchase price was paid, is an unreasonable delay and constitutes a breach of such condition. Under this theory, Parker would be entitled to recover the \$5,000, the amount paid on account of the purchase price prior to September 4. However, by reason of my other findings, he is entitled to no more than the return of his premium.

After the title company discovered the defect, there were settlement negotiations between the Title Company and the Parkers. During these negotiations, the Parkers represented to the Title Company that they had paid \$120,250 for Lots 1 and 2 when, in fact, they had only paid \$95,250. In my opinion this was a material misrepresentation made with intent to defraud the Title Company and the Title Company may avoid the policy on that ground.

The most troublesome problem in this case is whether or not the Winans family is entitled to recover damages for slander against Parker. During the negotiations between Parker and representatives of the Title Company, Parker informed them that the Winans family did not divulge the defect in the title and represented that they had good title.

Likewise each of the proposed contracts of settlement between the Parkers and the Title Company contained the following paragraph:

“Whereas the Parkers have represented to the company and hereby warrant that they had no knowledge of any defect in the title to said Lot 2 prior to their payment of the purchase price therefore and acceptance and recording of the deed to said property.”

Although none of these contracts were executed, the Parkers and their attorneys read at least one of the proposed contracts which contained such paragraph. Neither at that time nor at any other time did the Parkers object to the inclusion in the contract of such paragraph. In fact, their then attorney testified that all the negotiations were precipitated on the lack of knowledge of the title defect by the Parkers.

All of these proposed contracts authorized the attorneys for the Title Company to commence and prosecute a suit by the Parkers against the Winans family to rescind the sale. The Parkers objected to this paragraph. They insisted that the Title Company file such suit in its own name. Therefore, the Parkers knew that, if they did not permit a suit to be filed in their names, the Title Company, if it paid the loss, would do it. The Parkers also knew that the filing of such a suit would not only subject the Winans family to adverse publicity in both Portland and Hood River but also would require the Winans family to incur expenses to defend it.

§ 23-550 Oregon Compiled Laws Annotated reads as follows:

“If any person shall falsely represent that he is

the owner of any land to which he has no title, or shall falsely represent that he is the owner of any interest or estate in any land, and shall execute any conveyance of the same with intent to defraud anyone, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than 6 months nor more than 2 years."

If the representations of the Parkers to the Title Company were true, then Ethel Winans, and no doubt Paul Winans, would be guilty of having violated the Oregon Statute. A false statement which imputes a charge which, if true, would subject a person charged to indictment for a crime involving moral turpitude or subject him to infamous punishment is slanderous *per se*.

Although the evidence did not show that any of such statements were made by Stegman to the Title Company, in view of my finding that the Parkers and Stegman had entered into a conspiracy to defraud the Title Company, the false statements of the Parkers to the Title Company, which were merely part of the plan to defraud the Title Company, make Stegman equally liable with the Parkers.

In my opinion, therefore, the Winans are entitled to a judgment against the Parkers and Stegman for the damages they incurred as a result of the slander.

The Winans family have suffered damages at least equal to the amount of attorney fees which they incurred in defending this action.

Throughout this oral opinion, I have referred to a defect in the Winans title to Lot 2. There is no substantial dispute that title to Lot 2 is in the United States. Therefore, it would have been more correct to have used the words "failure of title" instead of "title defect." In the Findings of Fact, I suggest that it be made clear that the United States is the owner of Lot 2 and that Winans had no title to such lot.

During the trial, the parties stipulated that I could determine the amount of attorney fees to which any party was entitled and that, after determining liability, I would hear testimony as to the amount of work performed by such attorneys. The Winans family agreed to pay their attorneys a reasonable fee. In accordance with such stipulation, I will hear evidence as to the time spent and the amount of work performed by the attorneys for the Winans family. Such amount or such portion of the work which I believe should be chargeable to the Parkers will be awarded the Winans not as attorney fees but as damages for the slander.

This oral opinion, although much longer and more detailed than I had anticipated, is not intended to cover all of the material facts which should be included in the Findings. The attorneys for the Title and Trust Company shall submit Findings of Fact and Conclusions of Law on all issues raised by the pleadings.

Received January 15, 1954, U.S.C.A.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action came on regularly for trial before the undersigned, one of the judges of the above-entitled court, upon the issues defined in the pleadings herein. Plaintiff appeared by its attorneys, James K. Buell and Manley B. Strayer. Defendants Chet L. Parker and Lois M. Parker appeared by their attorney, Nicholas Jaureguy. Defendant Walter Stegmann appeared by his attorney, John D. Ryan. Third-party defendants, Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, appeared by their attorneys, Gunther Krause and Dennis Lindsay. Testimony and evidence were offered by each of the parties and received by the court and the court having considered the evidence and the arguments of counsel and all matters of fact and law pertinent to the issues, and being now fully advised, makes the following

Findings of Fact

I.

At all times material herein plaintiff was and now is a corporation organized under the laws of the State of Oregon and authorized thereby to engage in the business of insuring title to real property.

II.

Defendants Chet L. Parker and Lois M. Parker

are husband and wife and at the time of commencement of this action were and now are residents of the State of Washington.

III.

Defendant Walter Stegmann, at the time of commencement of this action, was and now is a resident of the State of Washington.

IV.

Third-party defendants, Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, at the time of the commencement of this action, were and now are residents of the State of Oregon.

V.

The amount in controversy between plaintiff and defendants Parker and between plaintiff and defendant Stegmann in each instance exceeds the sum of \$3,000.00, exclusive of interest and costs and attorney fees. All parties herein have waived jury trial as to all issues involved herein.

VI.

By Act of Congress of February 14, 1859, 11 Stat. at Large 383, Chap. 33, Section 4, by which Oregon was admitted as a state of the United States of America, contains the following provision:

“That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any

part thereof, has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools.”

This language has not been construed literally by the United States Supreme Court, *U. S. v. Morrison*, 240 U. S. 192 (1915).

VII.

At the time of the admission of the State of Oregon into the United States of America, the following-described property was a part of the public lands of the United States of America and said property had not been sold or otherwise disposed of and no patent was ever issued on said property by the United States of America:

The NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, in Hood River County, Oregon (hereinafter referred to as Lot 2).

VIII.

On June 17, 1892, all public lands within Section 16, Township 1 South, Range 8 East, of the Willamette Meridian were set apart and included within that portion of the Mt. Hood National Forest known as the Bull Run Timber Reserve by proclamation of the President of the United States. On said date Lot 2 above described had not been identified by survey and by reason thereof title to the same did not pass to the State of Oregon but remained in the United States, which at all times has

been and now is the owner of Lot 2. The claim to and the ownership of Lot 2 by the United States and the basis thereof were not at any time matters of record in the official real property records of Hood River County, Oregon, although such information was available in various state and Federal offices but not within Hood River County. During the year 1951 and prior thereto the official real property records of Hood River County, Oregon, disclosed a perfect chain of title from the State of Oregon to Ethel Winans.

IX.

On February 11, 1889, the State of Oregon, believing that it was the owner of Lot 2 by virtue of said Act of Congress, deeded said property, together with Lot 1 in said Section 16, Township 1 South, Range 8 East, of the Willamette Meridian, Hood River County, to C. A. Macrum, who in turn, in 1902, deeded the same to W. R. Winans, the father of third-party defendants. On or about December 29, 1943, the said W. R. Winans and Mary Winans, husband and wife, conveyed the said Lots 1 and 2 to the defendant Ethel Winans under an oral trust for the benefit of said W. R. Winans and Mary Winans during their lifetime, and thereafter for the benefit of other members of the Winans family at the discretion of the said trustee; and subsequent to the sale of the said Lots 1 and 2 and the delivery of the deed therefor on September 11, 1951, as hereinafter described, the third-party defendants have received portions of the money paid for said

premises. From February 11, 1889, to date said Lots 1 and 2 were carried on the tax rolls of Hood River County, which has assessed, levied and collected real property taxes, including fire patrol assessments thereon, and said taxes were regularly paid from tax years 1902-1903 through and including 1950-1951 by W. R. Winans and by Ethel Winans or by Paul Winans on behalf of the third-party defendants and others.

X.

Sometime prior to July 30, 1907, the State of Oregon selected the northwest one-quarter (NW $\frac{1}{4}$) of the northwest one-quarter (NW $\frac{1}{4}$) of Section 28, Township 20 South, Range 21 East, W.M. as lieu lands for the said Lot 2, and on July 30, 1907, the Commissioner of the General Land Office of the Department of the Interior of the United States of America officially approved said selection of lieu lands.

XI.

On or subsequent to July 30, 1907, the State Land Board of the State of Oregon tendered to W. R. Winans the consideration paid by Winans' predecessor in title to the State Land Board for said Lot 2.

XII.

In December, 1943, third-party defendants, Paul Winans and Ethel Winans, obtained from Pacific Abstract and Title Company a policy of title insurance on Lots 1 and 2 insuring title in such property in Ethel Winans. Thereafter and in 1944, as a result of negotiations between the third-party defend-

ants and the Forest Service of the United States Department of Agriculture, for the exchange of said Lots 1 and 2 for certain United States timberlands, the United States claimed ownership of said Lot 2, as a result of which the third-party defendants filed a claim with the said Pacific Abstract and Title Company under said policy on account of the unmarketability of the title of the said Ethel Winans to said Lot 2, and thereafter received the sum of \$3,000.00 in full settlement and discharge of said claim, in connection with which the said company waived all of its rights and claims of every kind to said Lot 2 as against the said Ethel Winans, her heirs and assigns, the United States and the State of Oregon, and to any moneys recovered or recoverable from Hood River County by reason of taxes theretofore paid on said Lot 2. At the time third-party defendants Paul Winans and Ethel Winans obtained such policy of title insurance, they had some information concerning the fact that the United States claimed ownership to Lot 2, and said third-party defendants did not disclose such information to such title company.

XIV.

Subsequent to the claim of ownership by the United States to said Lot 2 and the settlement of the said policy of title insurance thereon, the third-party defendants were advised that it would require a special act of Congress to give them a marketable title thereto, and they retained the services of an attorney to secure the passage of such legislation.

XV.

During the month of July, 1951, and extending until and including August 11, 1951, the defendant Stegmann negotiated with the third-party defendant Paul Winans initially for the purchase of Lot 1 and later for the purchase of Lot 2 as well as Lot 1. During the course of said negotiations the defendant Stegmann represented that he wanted to purchase said premises as a private mountain retreat for himself and his family, and at no time indicated that he was acting on behalf of the defendants Parker. In these negotiations, third-party defendant Paul Winans made a full disclosure to the defendant Stegmann concerning the claim of ownership of the United States to Lot 2, advising Stegmann that the United States asserted that title thereto had never passed from the United States to the State of Oregon because it had not been surveyed. The third-party defendant Paul Winans also made a complete disclosure concerning the policy of title insurance which Ethel Winans had previously obtained on said Lot 2 from Pacific Abstract and Title Company and the settlement which they had obtained by reason of the claim of ownership asserted by the United States to Lot 2.

XVI.

During the early stages of the negotiations between third-party defendants Winans and defendant Stegmann, the third-party defendants offered to sell Lot 1 for \$80,000.00 and later offered to sell

Lot 1 for \$80,000.00 and their interest in Lot 2 for \$20,000.00. Later it was agreed that the Winans would sell their interest in both lots as a unit for \$100,000.00. At the time the option hereinafter set forth was executed, the third-party defendants did not place separate valuations on Lot 1 and their interest in Lot 2 which they agreed to transfer to defendant Stegmann. Such option agreement, which was drafted by third-party defendant Paul Winans and which he and his sister, Ethel Winans, executed and delivered to defendant Stegmann, reads as follows:

“On or before seven days after date hereof, for and in consideration of the sum of \$1,000.00, the receipt of which is hereby acknowledged, I, Paul Winans, acting as the duly authorized agent of Ethel Winans, et al., hereinafter designated as The Sellers, agree and promise to sell to Walter Stegmann, his heirs or assigns, hereinafter designated The Buyer, at his option, the following-described real property:

“NW $\frac{1}{4}$, NE $\frac{1}{4}$ (Lot 1), containing 25.88 acres, and NE $\frac{1}{4}$, NW $\frac{1}{4}$ (Lot 2), containing 40 acres, more or less, in Section 16, Township 1 South; Range 8 East, Willamette Meridian in Hood River County, Oregon, excepting .88 acres located along and adjacent to the meandered water shore line of Lost Lake and which shall be selected, measured and staked out on boundaries mutually agreed upon on or before the expiration date of this option.

“For the total sum of \$100,000.00 to be paid as follows:

Credit by check subject to collection paid on option herewith.....	\$ 1,000.00
Payment on even date of written notice of election of The Buyer to purchase under this option.....	4,000.00
Final payment to be made on even date of delivery of deed to above-described land by The Seller on or before ninety days from date hereof.....	95,000.00
<hr/>	
Total	\$100,000.00

“For which The Seller agrees to deliver a good and sufficient deed of conveyance showing title free and clear of all mortgage, contract, judgment or tax liens, conveying to The Buyer all the right, title and interest of The Sellers to the above-described real property.”

In connection with the delivery of said option, the defendant Stegmann delivered a check drawn by him on The First National Bank of McMinnville in the sum of \$1,000.00, for the first payment as provided in said option.

XVII.

On August 13, 1951, the defendants Chet L. Parker and Stegmann visited the United States Forest Service Ranger Station at Parkdale, Oregon, and at such time representatives of the United States Forest Service showed them records con-

cerning Lot 2 and advised them that the title thereto was in question.

XVIII.

On August 18, 1951, and within the time specified in the option described above, the defendant Stegmann met with third-party defendants and personally executed a document drawn by the third-party defendant Paul Winans whereby Stegmann gave written notice of his election to exercise the option of August 11, 1951; and in connection therewith the defendant Stegmann delivered a check drawn by him on The First National Bank of McMinnville in the sum of \$4,000.00. Neither of defendants Parker was present at said meeting and the third-party defendants did not have any knowledge that the defendant Stegmann was acting on behalf of defendants Parker.

XIX.

The \$1,000.00 payment on August 11 and the \$4,000.00 payment on August 18 were each made by a check drawn by Stegmann on The First National Bank of McMinnville, Oregon. At said times Stegmann had no account in said bank or in any bank and the checks were, by direction of the defendants Parker, debited to one of their accounts in said bank.

XX.

On August 13, 1951, defendants Parker applied at the Hood River office of plaintiff for a title report on said Lots 1 and 2. At said time the defendants Parker gave to plaintiff a memorandum

containing the description of said property and the name of Ethel Winans as record owner.

XXI.

On August 16, 1951, plaintiff delivered to the defendants Parker a report as to the title of said Lots 1 and 2 showing title to the same to be in Ethel Winans and received from the defendants Parker the sum of \$25.00. At said time defendants Parker informed plaintiff that their purchase of the property was subject to a timber cruise.

XXII.

On August 27 or 28, 1951, the defendant Chet L. Parker was introduced to the third-party defendant Paul Winans by the defendant Stegmann as a friend of the defendant Stegmann who had some surveying experience; and, on August 31, while on a surveying party on the premises, the third-party defendant Paul Winans, although not knowing that the defendant Chet L. Parker was interested as a principal in acquiring the interest of the third-party defendants in said Lots 1 and 2, discussed with defendant Chet L. Parker the nature and basis of the claim of ownership of the United States to Lot 2 and the settlement of the policy of title insurance previously issued on said Lot 2 by reason of said claim of the United States.

XXIII.

On August 30, 1951, defendants Parker applied at the Hood River office of plaintiff for a purchaser's

policy of title insurance in the amount of \$125,000.00 and left with the plaintiff an assignment of said option from Stegmann to the defendant Chet L. Parker, dated August 13, 1951, and reciting that \$25,000.00 had been paid for said assignment and that the valuation of Lot 1 was \$35,000.00 and the valuation of Lot 2 was \$90,000.00.

XXIV.

On or about September 4, 1951, plaintiff issued to the defendant Chet L. Parker a policy of purchaser's title insurance in the face amount of \$125,000.00 showing a fee simple title to Lots 1 and 2 to be in Ethel Winans as of 8:00 o'clock a.m. August 30, 1951, and received from said defendant the sum of \$405.00 in payment of the balance of the total premium of \$430.00 on said policy of title insurance. Prior to the issuance of plaintiff's purchaser's title insurance policy, defendant Chet L. Parker, on August 29, 1951, furnished the Portland office of plaintiff for its inspection a copy of the option agreement executed by Paul Winans and Ethel Winans in favor of defendant Stegmann, together with an assignment of such option to defendant Chet L. Parker, and on the following day mailed to plaintiff's Hood River office the assignment of such option.

XXV.

On September 8 and 10, 1951, the defendant Stegmann and the third-party defendant Paul Winans and others met to draft the language of the deed and to agree upon a description of the area

to be reserved to third-party defendants. On said occasions the third-party defendant Paul Winans again reviewed and discussed with the defendant Stegmann the claim of ownership of the United States to Lot 2 and again offered to assist Stegmann in clearing the title to Lot 2 through Congressional action. In the course of said discussion the attorney for third-party defendants suggested that they consult with plaintiff's Hood River manager for the purpose of checking the legal sufficiency of the description of the reserved area. Such consultation was not held because of defendant Stegmann's objections. At the conclusion of said meeting on September 10, a deed was prepared and was executed by the third-party defendant Ethel Winans, in which deed the name of the grantee was left in blank at the request of the defendant Stegmann.

XXVI.

On September 11, 1951, the third-party defendant Paul Winans and his attorney, Vauter Parker, met with Kenneth Abraham, another Hood River attorney. Kenneth Abraham had been employed by defendants Parker to act for them in connection with the closing of the transaction, but he was not employed by them to obtain information regarding the title to Lot 2. Neither Paul Winans nor Vauter Parker was aware of the fact that Kenneth Abraham had been employed by defendants Parker in connection with this transaction. They were under the impression that he was acting on behalf of de-

fendant Stegmann. During such meeting, third-party defendant Paul Winans and his attorney delivered said executed deed and a refund check, in the sum of \$4,750.00 for additional acreage retained by the third-party defendant not provided for in the option of August 11, 1951, in exchange for a cashier's check drawn on the First National Bank of McMinnville in the sum of \$95,000.00. Said cashier's check was issued by the First National Bank of McMinnville at the request of defendants Parker and was paid for by defendants Parker. The only people present at such meeting were Kenneth Abraham, defendant Paul Winans, and Vauter Parker. At such meeting and during the time that both the cashier's check and the deed were on the desk of Vauter Parker, the third-party defendant Paul Winans advised Kenneth Abraham that the United States claimed ownership of Lot 2 and offered to assist in attempting to clear said title by an act of Congress. Kenneth Abraham thereafter delivered the executed deed to defendants Parker and informed them of the statements made to him by third-party defendant Paul Winans. Defendants Parker, on receiving said executed deed from their attorney, caused the name of Chet L. Parker to be filled in as the grantee in such deed and defendants Parker caused it to be recorded in the deed records of Hood River County, Oregon.

XXVII.

Prior to the payment of said balance of the purchase price and delivery of the deed, it had been

agreed between plaintiff and defendants Parker that upon the final closing of the transaction plaintiff would exchange its purchaser's policy of title insurance for an owner's policy in the same amount without additional charge. On September 12, 1951, at the request of defendants Parker, plaintiff issued to said defendants a policy of owner's title insurance in the principal amount of \$125,000.00 insuring a fee simple title to said Lots 1 and 2 in Chet L. Parker, subject to certain exceptions not herein material. At said time the purchaser's policy of title insurance previously issued was surrendered by defendants Parker to the plaintiff and no additional premium was charged or paid for said owner's policy of title insurance.

XXVIII.

In negotiating for and acquiring said option from third-party defendant Ethel Winans and in all subsequent transactions relative to said property, the defendant Stegmann acted as the duly authorized agent of defendants Parker and within the scope of his employment. During all of said negotiations and subsequent transactions the defendant Stegmann represented to third-party defendants Winans that he was acting in his own name for his own account, and the defendants Stegmann and Parkers concealed from third-party defendants Winans the fact that Stegmann was the mere agent for defendants Parker, who were undisclosed principals. Third-party defendants Winans did not learn that defendants Parker had any interest in the transac-

tion or purchase of said property until after the purchase price had been paid and the deed delivered and recorded.

XXIX.

At all times defendants Parker concealed from the plaintiff the fact that the defendant Stegmann had acted as their agent in the transactions relating to said property, and the plaintiff did not learn of such agency relationship until after the commencement of this action.

XXX.

At all times during the negotiations for and the purchase of said property, the defendants Stegmann and Parkers knew that the United States claimed title to said Lot 2, based upon the fact that the land had not been surveyed and consequently that title had never passed from the United States to the State of Oregon; that third-party defendants Winans had previously obtained a policy of title insurance on said property from Pacific Abstract Title Company showing Ethel Winans as the owner and had collected a substantial loss on such policy by reason of the Government's ownership of Lot 2; and that third-party defendants Winans had been advised that an act of Congress would be required to give them marketable title to such property.

XXXI.

At no time did defendant Stegmann make any affirmative representations to plaintiff with respect to the condition of the title to Lot 2.

XXXII.

At no time prior to the date upon which defendants Parker were issued plaintiff's owner's title insurance policy did the defendants Parker make any affirmative representations to plaintiff with respect to the condition of the title to Lot 2.

XXXIII.

Although defendants Parker had been informed by Paul Winans that the United States claimed ownership to Lot 2, and by representatives of the United States Forest Service that the title to Lot 2 was questionable, defendants Parker would not have directed defendant Stegmann to pay the sum of \$4,000.00 to third-party defendants Paul Winans and Ethel Winans except for the fact that the plaintiff's preliminary title report showed good title in Ethel Winans, and defendants Parker would not have paid third-party defendants Paul Winans and Ethel Winans the balance of the purchase price without having first received the purchaser's policy and assurances from plaintiff that it would issue an owner's policy after a deed executed by third-party defendant Ethel Winans in favor of defendant Chet L. Parker was recorded. The issuance of such report and such title policies was a necessary element in the scheme of defendants Parker and defendant Stegmann to defraud the plaintiff.

XXXIV.

At all times during the negotiations for and subsequent transactions relative to said Lots 1 and 2,

the third-party defendant Paul Winans acted on behalf of himself and of the other third-party defendants and was known to be so acting by the defendants Parker and Stegmann. At no time herein mentioned did the third-party defendant Paul Winans or any other third-party defendant represent to the defendant Stegmann or the defendants Parker that the third-party defendants had a marketable title to said Lot 2, nor was any representation made by the third-party defendants to the defendants Parker or Stegmann that the claim of ownership of the United States to Lot 2 was inconsequential and minor and without basis in fact.

XXXV.

On or about August 16, 1951, the defendants Parker and Stegmann, knowing of the status of the title to Lot 2 and that plaintiff had not discovered the defect of title in Ethel Winans, entered into a conspiracy to defraud the plaintiff by inducing the plaintiff to issue to defendants Parker a policy of title insurance on said property in an amount greater than its actual value and to collect the amount of such insurance from the plaintiff on account of the failure of title to Lot 2.

XXXVI.

Pursuant to said conspiracy and in furtherance thereof, defendant Stegmann executed and delivered to defendants Parker the assignment of option above referred to and on August 30, 1951, defendants Parker represented to plaintiff that said as-

signment was the basis of the interest of defendant Chet L. Parker in the property; that defendant Chet L. Parker had purchased the option from Stegmann and had paid him \$25,000.00 therefor; that the value of Lot 1 was \$35,000.00 and the value of Lot 2 was \$90,000.00. At the time said representations were made the defendants well knew that such representations were false in that defendants Parker had not paid to Stegmann \$25,000.00 or any other sum for said assignment; that, although at the time the option agreement was executed, the parties agreed on a purchase price of \$100,000.00 for all of the Winans' interest in both Lots 1 and 2, in the preliminary negotiations, third-party defendants Winans had placed a valuation of \$80,000.00 on Lot 1 and a valuation of \$20,000.00 on whatever interest the Winans family might have in Lot 2 which they were willing to sell. Said assignment of option was a sham and was executed and delivered to plaintiff for the purpose of deceiving it as to the amount paid for the property, the value of Lots 1 and 2 and the relationship between defendants Parker and Stegmann, and of inducing plaintiff to issue a title insurance policy in the amount of \$125,000.00.

XXXVII.

Pursuant to said conspiracy and in furtherance thereof, defendants Parker wilfully and intentionally concealed from and failed to disclose to the plaintiff their knowledge respecting the defect in

title to Lot 2 and the various circumstances attendant thereon, knowing at said time that the plaintiff had failed to discover such title defect and that it would issue its title insurance policy in ignorance thereof.

XXXVIII.

Pursuant to said conspiracy and in furtherance thereof, and for the purpose of preventing plaintiff from learning of such title defect from the Winans family, defendants Parker and Stegmann concealed from the Winans family the fact that defendants Parker were the persons negotiating for the purchase of Lots 1 and 2 and that they were obtaining title insurance on such property and third-party defendants and their attorney did not discuss the description of the reserved acreage with the plaintiff because of defendant Stegmann's objection.

XXXIX.

Plaintiff issued its policy of purchaser's title insurance without knowledge of such failure of title to Lot 2, believing that title to all of such property was vested in Ethel Winans and that defendants Parker had contracted to purchase the same for \$125,000.00, and in reliance upon the examinations which it made of its own records and the public records of the State of Oregon. It also relied upon the apparent good faith of defendants Parker and its belief that defendants Parker knew of no fact or circumstance which would impair the title to said property.

XL.

The defect in the title to Lot 2 could have been discovered by plaintiff by a proper examination of the statutes and records, all of which were available to it, and its failure to discover this defect of title was negligence on its part.

XLI.

On or about September 12, 1951, plaintiff learned from a representative of the United States Forest Service that the United States claimed title to Lot 2. Plaintiff thereupon advised defendants Parker of such claim and defendants Parker then falsely represented to the plaintiff that they knew nothing of any claim of ownership by the United States. In reliance upon such representations and believing that defendants Parker had acted in good faith throughout the transaction, plaintiff issued to defendants Parker its owner's policy of title insurance in the amount of \$125,000.00 in lieu of said purchaser's policy of title insurance. Said representations were made by defendants Parker with the intention that plaintiff should rely thereon and for the purpose of defrauding plaintiff by concealing from it the existence, purpose and details of the conspiracy between them and defendant Stegmann and to induce plaintiff to issue said owner's title insurance policy.

XLII.

The purchaser's policy of title insurance contained the following provision:

“Upon receipt of notice of any defect, lien or encumbrance hereby insured against, the insured shall forthwith notify the company thereof in writing.”

Although defendants Parker knew of the defect in title to Lot 2 on September 4, 1951, the date on which said purchaser's policy was issued and knew that it was substantial, they failed to give any notice whatever thereof to plaintiff prior to September 11, when final payment of the purchase price was made. Such failure to notify prior to September 11 was unreasonable and materially prejudicial to the plaintiff and constituted a breach of such policy provision.

XLIII.

Following discovery of the defect in title to Lot 2 by the plaintiff, defendants Parker presented a claim of loss to the plaintiff and said parties entered into settlement negotiations. During such negotiations Parkers falsely represented to the plaintiff that they had paid \$120,250.00 for Lots 1 and 2 when they had in fact paid only \$95,250.00 for said property. Defendants Parker also represented to the plaintiff that the third-party defendants had not divulged to them any defect in the title to Lot 2 or disclosed their knowledge of the claim of ownership of the United States to Lot 2. The defendants Parker also by their words and conduct wilfully and intentionally induced the plaintiff to believe that the third-party defendants had represented themselves to be the owners of Lot 2 and to have a good title thereto. Said misrep-

representations were material and were made with intent to defraud the plaintiff, and with the knowledge that the probable consequences of such false representations made to plaintiff would injure third-party defendants Winans.

XLIV.

After the commencement of this action defendants Parker filed herein a counterclaim against plaintiff based upon said policies of title insurance. Thereafter a third-party complaint was properly filed by plaintiff against third-party defendants Winans, to which third-party complaint said third-party defendants filed an answer and cross-claim against defendants Parker and Stegmann to recover damages for engaging in a conspiracy to defraud the plaintiff and the third-party defendants and to defame the names and reputations of the third-party defendants. All parties hereto have stipulated that said cross-claim may be determined in this action. Third-party defendants also filed a counterclaim against plaintiff but abandoned the same at the conclusion of the trial.

XLV.

Said representations of defendants Parker to plaintiff in connection with their claim for loss constituted slander of third-party defendants Winans by imputing to them the commission of a crime within the meaning of Section 23-550, O.C.L.A., by having falsely represented that they were the owners of land to which they had no title and by a

conveyance of such land with the intent to defraud defendants.

XLVI.

Said representations by defendants Parker to plaintiff concerning the third-party defendants were made with the knowledge that the plaintiff would institute legal proceedings against the third-party defendants and that the third-party defendants would be subject to adverse publicity in Portland and in Hood River and would require them to incur expenses to defend such proceedings and to clear their names and reputations of false imputations of crime and dishonesty cast upon them by the defendants. Thereafter plaintiff did institute the present suit in which the complaint charged that the third-party defendants falsely represented they were the owners of a marketable title to Lot 2 and that none of the third-party defendants disclosed to the defendants Parker and Stegmann the claim of ownership of the United States to Lot 2 or the settlement of the policy of title insurance issued by the Pacific Abstract Title Company on Lot 2 as a result of said claim of the United States. These charges were copied and published by a newspaper at Hood River, Oregon, and given wide circulation in Hood River, Oregon, and in the surrounding area where the third-party defendants reside. Said representations by the defendants Parker were made pursuant to and in furtherance of the conspiracy between said defendants and the defendant Stegmann to defraud the plaintiff.

XLVII.

Such false representations made by defendants

Parker were largely responsible for the inclusion of third-party defendants Winans as defendants in the original action filed by plaintiff. Such action and the publicity which it received in both the Portland and Hood River newspapers caused injury and damage to the third-party defendants Winans in that it not only required them to expend their own time in the preparation and trial of this case but also required them to employ and pay for the services of attorneys to represent them in such action. Such action and publicity resulting therefrom likewise made it more difficult for third-party defendants Paul Winans and Linnaeus Winans to obtain credit in connection with their respective businesses.

XLVIII.

As the result of such injurious falsehoods and such slanderous statements, the third-party defendants Winans suffered damages in the sum of \$9,000.00.

Based on the foregoing Findings of Fact, the court makes the following:

Conclusions of Law

I.

The Court has jurisdiction of the parties and of the subject matter of the causes of action, counter-claims and cross-claims herein.

II.

The equities are with the plaintiff and against the

defendants Chet L. Parker, Lois Parker and Walter Stegmann.

III.

In all negotiations for the purchase of said property defendant Stegmann acted as the duly authorized agent of defendants Parker and communications received by him were within the scope of his authority.

IV.

The misrepresentations and concealment of material facts by defendants Parker and defendant Stegmann in inducing plaintiff to issue the policies of title insurance and in connection with their claim of loss on said policies constituted fraud entitling plaintiff to a decree canceling and setting aside each of said policies of insurance upon return of the premium therefor by depositing the same in the registry of this court. The amount of such premium to be returned is the sum of \$430.00 with interest at six per cent per annum or \$25.00 thereof from August 16, 1951, and on the balance of \$405.00 from August 30, 1951.

V.

Third-party defendants Winans are entitled to judgment against defendants Parker and Stegmann in the sum of \$9,000.00.

VI.

The third-party complaint of plaintiff against the third-party defendants should be dismissed with prejudice.

VII.

The cross-claims of the defendants Chet L. Parker and Stegmann against the third-party defendants Winans should be dismissed with prejudice.

VIII.

The counterclaims of defendants and of third-party defendants against plaintiff should be dismissed with prejudice.

IX.

Plaintiff is entitled to judgment against defendants Parker and Stegmann for its costs and disbursements herein.

X.

Third-party defendants are entitled to judgment against plaintiff and against defendants Parker and Stegmann for their costs and disbursements herein.

Dated at Portland, Oregon, this 25th day of June, 1953.

/s/ GUS J. SOLOMON,
District Judge.

[Endorsed]: Filed June 25, 1953.

In the District Court of the United States
for the District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,
Plaintiff and Third-Party Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and
WALTER STEGMANN,

Defendants,

vs.

PAUL WINANS, ETHEL WINANS, ROSS M.
WINANS, AUDUBON WINANS, and LIN-
NAEUS WINANS,

Third-Party Defendants.

JUDGMENT ORDER

The above cause came on regularly for trial on January 19, 1953, before the undersigned judge of the above-entitled court. Plaintiff appeared by James K. Buell and Manley B. Strayer of its attorneys. Defendants Chet L. Parker and Lois M. Parker appeared by Nicholas Jaureguy of their attorneys. Defendant Walter Stegmann appeared by John D. Ryan of his attorneys. Third-party defendants, Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans and Linnaeus Winans, appeared by Dennis Lindsay and Gunther Krause

of their attorneys. All parties waived trial of any of the fact issues by a jury and agreed to try all issues of fact and law arising out of the matters set forth in the pleadings before the court without a jury. The parties thereupon introduced testimony and evidence in support of their respective cases and claims and thereafter argued their contentions of fact and law to the court; and the court having thereafter taken the case under advisement and having fully and carefully considered all the issues of fact and law arising herein; and

It Appearing to the Court, and the Court having found in favor of the plaintiff and against the defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, on the causes of action set forth in plaintiff's amended complaint and the causes of action set forth in the counterclaims of said defendants; and having found in favor of the third-party defendants and against the plaintiff on the causes of action set forth in the third-party complaint; and having found in favor of the third-party defendants and against the defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann on the causes of action set forth in the cross-claim of the third-party defendants and on the cross-claims of said defendants against the third-party defendants; and the third-party defendants having abandoned their counterclaim against plaintiff in open court; and the court having heretofore made and entered its Findings of Fact and Conclusions of Law,

Now Therefore, pursuant to said Findings of

Fact and Conclusions of Law and in accordance therewith,

It Is Hereby Considered, Ordered, Adjudged and Decreed as follows:

1. That that certain policy of Purchaser's Title Insurance, HR No. 12987, issued and delivered by plaintiff to defendant, Chet L. Parker, in the face amount of \$125,000.00 insuring a fee simple title to the property described therein in Ethel Winans as of 8:00 o'clock a.m., August 30, 1951, and that certain policy of Owner's Title Insurance, HR No. 12987, issued and delivered by plaintiff to defendant, Chet L. Parker, in the face amount of \$125,000.00 insuring a fee simple title to the property described therein in Chet L. Parker as of 8:00 o'clock a.m., September 12, 1951, be and the same hereby are cancelled and set aside and held for naught upon payment by plaintiff into the registry of this court of the sum of \$430.00 together with interest on \$25.00 thereof at six per cent per annum from August 16, 1951, and on \$405.00 thereof from August 30, 1951, until the date of such payment into the registry of this court, and the clerk of this court is hereby directed to pay and said sum of \$430.00 together with said interest thereon over to the defendant, Chet L. Parker, on account of the premium paid for said policies.

2. That the counterclaim of defendants, Chet L. Parker and Lois M. Parker, based upon said policies of title insurance, be and it hereby is dismissed with prejudice.

3. That the counterclaim of defendant, Walter Stegmann, against plaintiff be and it hereby is dismissed with prejudice.

4. That the third-party complaint of plaintiff against third-party defendants and the counterclaim of third-party defendants against plaintiff be and they hereby are dismissed with prejudice.

5. That the counterclaims of defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, against third-party defendants be and they hereby are dismissed with prejudice.

6. That the third-party defendants have judgment for and recover of and from defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann the sum of \$9,000.00, and that said third-party defendants have judgment for and recover of and from said defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, their costs and disbursements herein incurred, taxed in the sum of \$.....

7. That plaintiff have judgment for and recover of and from defendants, Chet L. Parker, Lois M. Parker and Walter Stegmann, its costs and disbursements herein incurred, taxed at \$.....

8. That third-party defendants have judgment for and recover of and from the plaintiff their costs and disbursements herein incurred, taxed in the sum of \$.....

9. That execution issue hereon.

Dated at Portland, Oregon, this 25th day of June, 1953.

/s/ GUS J. SOLOMON,
Judge.

Service of copy acknowledged.

[Endorsed]: Filed June 25, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Chet L. Parker and Lois M. Parker, defendants above-named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from each and every part and from the whole of the final judgment entered in this action on June 25, 1953, it being the intention of said defendants to appeal from each order and judgment included in the Judgment Order entered on said date.

CAKE, JAUREGUY & HARDY,

By /s/ NICHOLAS JAUREGUY,
Attorneys for Defendants Chet L. Parker and Lois
M. Parker.

Service of copy acknowledged.

[Endorsed]: Filed July 23, 1953.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The following is the statement of Chet L. Parker and Lois M. Parker of the points on which they intend to rely on appeal. The court erred in:

1. Entering Findings of Fact No. XV; first two sentences of XVI; XVII; last sentence of XVIII; last sentence of XXI; XXII; second and fourth sentences of XXV; third and fourth sentences, lines 24 to 26 of eighth sentence, of XXVI; XXVIII; XXIX; XXX except lines 16 to 18; first four lines and last sentence of XXXIII; second sentence of XXXIV; XXXV; XXXVI; XXXVII; XXXVIII; XXXIX; portions of XLI; XLII except first paragraph; XLIII except first sentence; XLV; XLVI; XLVII; XLVIII.

2. Entering Conclusions of Law No. II, III, IV, V, VI, VII, VIII, IX, X.

3. Entering the final judgment, particularly subparagraphs 1, 2, 5, 6 and 7 thereof.

4. Refusing to enter a judgment in favor of defendants Parker as prayed for in their counter-claim and cross-claim.

5. In numerous rulings at the trial of the cause in the admission of evidence on behalf of plaintiff and third-party defendants, and in the exclusion of evidence offered by these defendants. (Upon request a more detailed designation of these errors

will be furnished after the reporter completes the transcript of testimony.)

CAKE, JAUREGUY & HARDY,

By /s/ NICHOLAS JAUREGUY,
Attorneys for Defendants Chet L. Parker and Lois
M. Parker.

Service of copy acknowledged.

[Endorsed]: Filed July 23, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Walter Stegmann, the defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from each and every part and from the whole of the final judgment entered against him in this action on June 25, 1953, it being the intention of said defendant to appeal from each order and judgment included in the Judgment Order entered on said date.

RYAN & PELAY,

By /s/ JOHN D. RYAN,
Attorneys for Defendant
Walter Stegmann.

Service of copy acknowledged.

[Endorsed]: Filed July 24, 1953.

United States District Court,
District of Oregon

Civil No. 6242

TITLE AND TRUST COMPANY, a Corporation,
Plaintiff and Third-Party Plaintiff,

vs.

CHET L. PARKER, LOIS M. PARKER, and
WALTER STEGMANN,
Defendants,

vs.

PAUL WINANS, ETHEL WINANS, ROSS M.
WINANS, AUDUBON WINANS and LIN-
NAEUS WINANS,

Third-Party Defendants.

TRANSCRIPT OF PROCEEDINGS

Tuesday, January 20, 1953

Before: Honorable Gus J. Solomon,
District Judge.

Appearances:

JAMES K. BUELL and
MANLEY B. STRAYER,
Of Attorneys for Plaintiff and Third-
Party Plaintiff.

NICHOLAS JAUREGUY,
Of Attorneys for Chet L. Parker and
Lois M. Parker, Defendants.

JOHN D. RYAN,
Attorney for Walter Stegmann, Defendant.

GUNTHER F. KRAUSE and
DENNIS J. LINDSAY,

Of Attorneys for Paul Winans, Ethel
Winans, Ross M. Winans, Audubon
Winans and Linnaeus Winans, Third-
Party Defendants.

* * *

EDWARD MILLER

was thereupon produced as a witness in behalf of the plaintiff and third-party plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Miller, where do you live?

A. In Hood River.

Q. What is your occupation?

A. I am manager of the branch office of the Title and Trust Company in Hood River.

Q. How long have you been so employed?

A. Since 1946.

Q. When did the Title and Trust Company open its branch office in Hood River?

A. In June of 1946.

Q. Were you sent to the office when it was opened? A. Shortly after it was opened.

Q. Was there already an existing title office or plant at Hood River when you arrived there?

A. Yes, there was. The Title and Trust Company bought out the Hood River Abstract and Investment Company.

(Testimony of Edward Miller.)

Q. Did the Title and Trust Company use the lot books previously kept by the Hood River Abstract and Investment Company, or did it prepare all new title records for the county? [3*]

A. Used the ones already in existence.

Q. Will the Bailiff please hand the witness what has been marked for identification as Plaintiff's Exhibits 2, 3, 4 and 6.

(Photostatic copy of Title and Trust Company document HR No. 12987 was thereupon marked Plaintiff's Exhibit 2 for identification.)

(Photostat of closed file HR No. 12987, Title and Trust Company, was thereupon marked Plaintiff's Exhibit 3 for identification.)

(Documents, Mrs. Sinclair's file HRA Base No. 109, was thereupon marked Plaintiff's Exhibit 4 for identification.)

(Photostat, Land Abstract Index, Township No. 1, Range No. 8, Section 16, was thereupon marked Plaintiff's Exhibit 6 for identification.)

Mr. Buell: If it please the Court, it might or probably could save considerable time if Counsel had no objection, we have additional photostatic copies of documents just handed the witness, and it might make it easier for the Court to follow the testimony pertaining to the records if the Court could look at them.

(Testimony of Edward Miller.)

The Court: Let me take a look at them. [4]

Mr. Buell: These are Exhibits 2, 3 and 6.

Mr. Jaureguy: If they have any more, it would make it easier for counsel.

Q. (By Mr. Buell): Now, Mr. Miller, you will find that the exhibit numbers we are referring to are stamped, I believe, on the back of the photo-static copies, and there is also a sticker on the front with the number. A. Yes.

Q. Now, referring first to Exhibit No. 2, would you advise the Court what that document is?

A. It is the billing record of this particular transaction.

Q. Involving the policies of insurance which you issued to Chet Parker? A. That is correct.

The Court: I think we had better stop now before we get into it any further.

(Thereupon a short recess was taken.)

EDWARD MILLER

recalled, testified as follows:

Direct Examination

(Continued)

By Mr. Buell:

Q. We were referring to Exhibit 2, Mr. Miller. What is the number in the upper right-hand corner, HR No. 12987?

A. That is the order number for the, both for the placing of the original order and for the title insurance policy.

(Testimony of Edward Miller.)

Q. What business or what records or what files of your [5] office are given order numbers such as that?

A. All of our business has an order number.

Q. Is that the number under which all data pertaining to the particular order is filed in your Hood River office?

A. That is correct. We keep a file of each order separately by number.

Q. Those numbers run successively?

A. Yes, they do.

Mr. Buell: He is referring to the one-page document, your Honor.

The Court: Is this the order, this one (indicating document)?

Mr. Buell: Yes, the ledger sheet. He identified it as the billing record, I believe he described it as.

The Court: I did not hear what you said.

Mr. Buell: I believe Mr. Miller described it as a billing record.

The Court: Yes, I have it here.

Q. (By Mr. Buell): On August 13 of 1951, Mr. Miller, how many orders did your Hood River office receive and write up?

A. I don't remember the exact number, but there were four or five, maybe six of them. They usually come in in the morning. That was a Monday morning. This particular one was the first one for that day.

The Court: What is the significance of this testi-

(Testimony of Edward Miller.)

mony, [6] how many orders came in? What is the relevancy?

Mr. Buell: He stated it was the first order written up for that day, your Honor.

The Court: I would like to ask a question. Is it your contention that people who order title policies or title searches are required to divulge all the information they have concerning the title?

Mr. Buell: It is our contention that they are under obligation to disclose any defects or a claim of defects they had notice of.

The Court: Is there a policy requirement of that?

Mr. Buell: Not prior to the issuance of the policy. There is no written provision in the contract, no, your Honor.

The Court: Does the policy itself say that this policy is issued on condition that there has been a complete disclosure of all the facts pertaining to the title?

Mr. Buell: No, there is no written condition such as that.

The Court: Do you have any authority to support your contention?

Mr. Buell: Yes, we do, your Honor.

The Court: That it is incumbent on a person who seeks a title policy to divulge all information affecting the validity of the title? [7]

Mr. Buell: To disclose any facts of which the applicant has knowledge as to any defect or possibility of defects as to the defect of the title.

The Court: Even to the company that is on the

(Testimony of Edward Miller.)

reissue of a policy? This was a reissue of a policy, was it not?

Mr. Buell: Not a reissue of one of the policies, your Honor, but, in any event, the duty is there to disclose any facts, if known or of which they had knowledge, that are material to the rest.

The Court: Well, is the customer supposed to know what the title company knows or doesn't know? This is not a case of forgery of a title. This is a case of where the record itself, if a proper examination of the title were made, the company would have caught it.

Mr. Buell: Well, this goes to the—if he did not know about it, then he couldn't disclose it, but if it is a fact which he does know then he has a duty to disclose it.

The Court: How does he know that the company does not know it when it can be determined from the records? If there is a mortgage on the property, is it incumbent upon me to notify the company that there is a mortgage even though the mortgage is a matter of record?

Mr. Buell: Well, in this particular case, your Honor, the evidence subsequently to be brought in here will disclose that not only did they know of the defect but that [8] they also had notice of the fact that the title had been previously insured.

The Court: Well, that is all the more reason why it should not be incumbent upon him to disclose.

Mr. Strayer: Pardon me, your Honor.

(Testimony of Edward Miller.)

The Court: Go ahead. I do not understand the theory of this.

Mr. Strayer: I think that your Honor and Mr. Buell have a basic misunderstanding. In the first place, this was not a reissue in the sense that your Honor is thinking about. There was an outstanding policy only on Lot 1 as to which the title was okeh. Now, Mr. Parker was getting a policy, title policy of insurance on both of those, and to the extent that he was getting one on the good title land it was a reissue, but it was a new title on the balance. Now as to the knowledge of the defect, there was nothing of record. The testimony will show that there was nothing of record in Hood River County which disclosed any defects. It would not have been disclosed by an examination of the records of the former company that the Title and Trust Company had taken over or of any of the public records in Hood River County, and it is our contention that Mr. Parker, having the actual knowledge of that defect in title, was under a duty to disclose.

The Court: Well, I think it might be also incumbent upon you to show that Mr. Parker knew that those facts were [9] not available to the title company.

Mr. Strayer: Well, we think we will have evidence of that, your Honor. I do not think that that is necessary, but we think the evidence will indicate that.

The Court: All right; go ahead. I do not want to prevent you from putting on your whole case, but

(Testimony of Edward Miller.)

last night I began to worry about that, wanting to know if there was a condition in the policy which required full disclosure or whether there was any law. I would like to see your authorities, incidentally, so that during the noon hour I can take a look at them.

Mr. Strayer: I have not done a lot of work on the law. Perhaps I should not speak on it, but my understanding is this, your Honor, that when a person applies for a policy of title insurance that there is a fiduciary relationship between the insurer and the insured; that the applicant has a duty to disclose the fact that what he is asking to be insured actually is non-existent, and that is what was done in this case.

The Court: Tell me that again.

Mr. Strayer: Where an applicant applies for a policy of title insurance the duty rests upon him arising out of a fiduciary relationship there to reveal defects of which he has actual knowledge and certainly as to which he has reason to believe—— [10]

The Court: Which are not a matter of record, for instance?

Mr. Strayer: I beg your pardon?

The Court: For instance, I used forgery as an example. I think that is a clear example where it is incumbent upon the purchaser to speak up if he knows that there is a forgery because the company would have no way of determining that. Likewise, if there is somebody in a house that nobody knows about or the company does not know about who

(Testimony of Edward Miller.)

might have some rights, I think on that proposition it might be incumbent upon them to disclose, but, in that event, the company would not be liable anyway on their policy because they only are liable for those matters which are matters of record, isn't that right?

Mr. Jaureguy: No.

The Court: What is the law on that as to company liability for matters which are not matters of record?

Mr. Jaureguy: That is correct except as provided in the policy. Now the last illustration your Honor covered, there was a provision in the policy that excepts claims of persons in possession, you see, but otherwise that they are liable whether it is a matter of record or not. Of course, in this case it was a matter of record although not, as we understand it and have admitted, in the public deed records of Hood River County, but it was a matter of record in at [11] least three places we know of in the State of Oregon. We know from experience we can pick up a telephone and call the State Land Board and learn over the telephone whether these sixteen 36's are, have actually passed to the State of Oregon.

Mr. Strayer: I believe it so happened in this case that the State Land Board had no records. They had been destroyed in the fire in Salem, but the information should be available in Washington, D. C., but there was no information of record under the recording in Hood River County as to the defect.

(Testimony of Edward Miller.)

Mr. Jaureguy: I will have to correct one statement that you made, that on the former policy, former claim that was true, but in connection with the former claim the State Land Board obtained the information so that it was of record in Salem. It was of record in Roseburg, and it was of record in Swan Island.

Mr. Strayer: I think it was of record in Swan Island. I am not familiar with the Salem end. That might very well be true, and Mr. Jaureguy has lived with the case more than I have.

The Court: I am not so very much concerned about where it was of record as long as it was of record some place and the company could have discovered it, but I am still concerned about the obligations of a purchaser to disclose matters of [12] record which are available to the company, and I would like very much to see the authorities upon which you rely.

Mr. Strayer: I am sure Mr. Buell can furnish those to your Honor during the noon hour. I would like to get clear in my mind though, do I understand that your Honor has the view at the present time that regardless of intent to deceive, and intent to defraud, nevertheless a person can go to a title company and by concealing what he knows that what he is asking to insure is in fact non-existent, he can devise a scheme to defraud the title company and collect on that scheme?

The Court: Well, you have got too many "ifs" in that.

(Testimony of Edward Miller.)

Mr. Jaureguy: I will say if your Honor were of that view I might not disagree with your Honor.

The Court: I understood from Mr. Buell yesterday that it was the contention of the plaintiff that in the absence of fraud plaintiff has a cause of action?

Mr. Strayer: We do contend that, your Honor, there is a distinction between specific intent to defraud and the failure to disclose a fact known to the applicant for insurance at the time he applies for it.

The Court: You say you do not rely on the policy to be issued in this suit?

Mr. Strayer: Not with regard to the fraud. We rely on two specific policy conditions. However, that will be [13] developed during the case as the evidence comes in. One is a specific written duty on the part of an owner of a policy of insurance to give written notice to the company immediately upon receipt of notice of any defect or claimed defect in the title. We claim that that was breached between the time the purchaser's policy was issued and the time the deed was placed of record. Second, there is the exclusion in the policy that Mr. Jaureguy pointed out, that the policy did not insure against rights of persons in possession or claiming to be in possession.

It is our position in this case that the United States, through the resident ranger at Parkdale, was in possession of the property, and it was posted and within the timber reserve.

(Testimony of Edward Miller.)

The Court: That is not the kind of possession that the policies refer to. Proceed.

Q. (By Mr. Buell): Mr. Miller, you testified that this Order 12987 was the first one written on August 13th. Now, referring to Exhibit 3, what is that exhibit?

A. That is a photostatic copy of the file kept in this particular matter.

Q. Your file?

A. Yes, Title and Trust Company file.

The Court: What exhibit is that? [14]

The Witness: Exhibit 3.

The Court: Is that 2?

The Witness: 3.

Q. (By Mr. Buell): Is there any connection, Mr. Miller, between the time that the printed form when blank, or blank at the top of the first page of Exhibit 3, is filled out and the printed matter appearing on Exhibit 2, which is the billing record?

A. Any difference in time?

Q. I say, is there any connection in time?

A. Well, it is done at the same time, but the typing and the billing is a carbon copy of the first sheet on file.

Q. Now, referring to that file, Exhibit 3, would you please describe or advise the Court what the notation, "Report delivered on 8-15-51 to Home Office, Attention Mr. Muschalic," in whose handwriting is that notation?

A. I think that is my handwriting, and that is the date on which we mailed the report to our home

(Testimony of Edward Miller.)

office in Portland for the attention of Mr. Muschalic.

Mr. Lindsay: Excuse me. What page are you referring to?

The Witness: That is the front page.

Mr. Buell: Page 1 of Exhibit 3.

Q. Mr. Miller, referring to the entries in the boxed space in the printed form under the printed words, "Do not write here," what are those figures, and what do they represent? [15]

A. Those figures represent the premium charged for the policy as it will be written. The first figure of \$45.00 is a reissue rate for the policy in the amount of \$8,000. Following that is an increase and, crossed out, the figures \$185.00. That is the increase from \$8,000 to \$50,000 with a total premium of \$230 as the order was originally placed.

Q. Then what is the figure 385 substituted in lieu of 185 which is scratched out?

A. When the order was increased from \$50,000 to \$125,000, the increase then was \$385, which brings the total up to \$430.

Q. When the preliminary report was mailed to the home office, was a billing sent along with it?

A. Yes, that is customary, and the billing was sent along under the original figures with a total of \$230.

Q. That was based upon what amount of policy?

A. \$50,000.

Q. Now, would you explain to the Court what this reissue premium is?

A. It is a little lower rate is about all it amounts

(Testimony of Edward Miller.)

to, and we recognize that whether the prior policy is our own or the policy of another company.

Q. In this particular case whose policy was the reissue credit given upon?

A. Pacific Abstract and Title. [16]

The Court: Did you know about that at the time?

The Witness: Yes, sir.

The Court: The policy was written through the Hood River Abstract Company, though?

The Witness: That is correct.

The Court: Actually, they made the search, did they not, Hood River Abstract Company, not Pacific?

The Witness: Yes, that would be correct.

The Court: Pacific only got 20 per cent of the premium for the writing of the policy, that is all; isn't that right?

The Witness: Well, I don't know about that.

The Court: All right. Proceed.

Q. (By Mr. Buell): Did you at the time the preliminary report was sent out know that there had been a loss paid under the prior Pacific policy?

A. No, I did not.

Q. Referring to Page numbered 11½ in the file, Exhibit 3, can you identify what that is?

A. That is a notation left by Mr. Chet Parker when he placed the order giving the description, the name of the owner, his name and address and telephone number.

Q. What is the Page 2, the following page?

(Testimony of Edward Miller.)

A. It is what we call our chain sheet.

Q. Whom was that prepared by?

A. By Miss Vose of our office. [17]

Q. What is the Page 3?

A. That is a lien check, the names of the people involved. We make a check on what we call the general index against judgments and general liens.

Q. Whom is that search made by?

A. By the chain-maker ordinarily, which would be Miss Vose.

Q. What is Page 4?

A. Those are my notations on a suit brought to foreclose a mortgage.

Q. What is Page 5?

A. Those are my instructions to the stenographer in typing the report.

Q. Then down in the lower left-hand corner there appears in print or mimeographed words, "Chain held by," and then those initials, and "Report held by," and initials. What does that represent?

A. The typist and one other person compares the report against the instructions, and that shows who held the chain order instructions and who held the report.

Q. Whose initials are "E.W."?

A. Elaine Walston.

Q. What is "H.B."?

A. That is Helen Bisbee.

Q. Who are they?

A. They were employed in our office at this

(Testimony of Edward Miller.)

particular time. [18] Helen Bisbee was a part-time girl.

Q. Then referring to page 6, what is that?

A. That is a photostatic copy of the report itself.

Q. The preliminary report to Mr. Parker?

A. That is correct. That is the one we sent to Portland.

Q. Below the description of the property there is in writing "Saving and excepting therefrom, etc." Can you identify that handwriting?

A. That is my handwriting. The description covering the transaction was changed. Certain property was reserved so we modified our description to conform to the deed in question.

Q. When was that notation made on your file and copy of the preliminary report?

A. That would have been prior to the issuance of the insurance policy. I don't remember the——

Q. How about relative to the time the deed had been placed of record?

A. I might have made it on the day the deed was recorded or the day following.

Q. Referring to the sheet which appears to be numbered 7 or is entitled "Inter-Office Memo," would you explain what that page is?

A. That is a notation we sent along with the report when we mailed it to Mr. Muschalie at the Portland office and his [19] response written at the bottom of that.

Q. What is page 8?

(Testimony of Edward Miller.)

A. Those are stenographer's instructions for writing a purchaser's policy.

Q. Were those instructions made out by yourself?

A. No, they were made out by Jerry Gray who was a relief man in Hood River at the time I was on my vacation.

Q. What is page 9?

A. Those are my instructions on the insurance policy.

Q. What is the document attached to the back page and apparently not numbered?

A. That is a photostatic copy of the purchaser's policy of title insurance.

Q. Is that a photostatic copy of the original policy of purchaser's title insurance?

A. That is right.

Q. When was that returned to your possession?

A. September 12, as I recall it.

Q. You mentioned your vacation there. When did you commence your vacation that summer, Mr. Miller?

A. Well, it was on August 20th, which would have——

Q. When did you return?

A. The day after Labor Day.

Mr. Lindsay: What date was that? Excuse me.

The Witness: That would have been September 4th, if I [20] remember right.

Q. (By Mr. Buell): Mr. Miller, referring to Exhibit 4, would you identify that, please?

(Testimony of Edward Miller.)

A. That is the file kept by the Hood River Abstract and Investment Company on the original policy issued in the amount of \$8,000.

Q. What is the file number?

A. We have it as Base No. 109.

Mr. Buell: We did not have copies of that. I am sorry, your Honor.

The Court: That is all right. Has this man just been called for the purpose of identifying documents so that they may be admitted in evidence? Is that the purpose?

A. It was primarily, your Honor, so that the record will show what these exhibits are and what the various attachments to them are and when and how they were made, is the only way I knew of getting it into the record. I hate to take the time, but I did not see any other way.

The Court: There is no controversy about anything about which he has testified, but go ahead.

Q. (By Mr. Buell): Mr. Miller, is that Base File 109, Exhibit 4, has that been in your possession since you have been—or custody or control since you have been manager of the Hood River office?

A. Yes, it has. [21]

Q. Have there been any changes or alterations made to it since that time?

A. None that I know of.

The Court: Are you objecting? Is anybody objecting to the admissibility of that document?

Mr. Jaureguy: No.

Mr. Krause: No.

(Testimony of Edward Miller.)

Mr. Ryan: No.

The Court: It may be admitted.

(Document previously marked Plaintiff's Exhibit 4 for Identification was thereupon received in evidence.)

Mr. Buell: Mr. Jaureguy, I wonder if I could have Exhibit 74?

(Thereupon there was a discussion between Court and counsel off the record.)

The Court: Is there any objection to any of the documents about which the witness has been speaking?

Mr. Jaureguy: No objections from our part.

The Court: All of them may be admitted?

Mr. Buell: 2, 3 and 4?

The Court: All of them.

(Thereupon the exhibits previously marked Plaintiff's Exhibits 2, 3 and 4 for Identification were received in evidence.) [22]

Q. (By Mr. Buell): Referring to Exhibit 6, Mr. Miller—

The Court: 6, that is the tract record.

Mr. Buell: Could I get into the record what that is, your Honor?

The Court: All right, go ahead.

Q. (By Mr. Buell): What is Exhibit 6?

The Witness: It is a photostatic copy of the tract book's notation in this particular section.

The Court: It may be admitted.

(Testimony of Edward Miller.)

(Thereupon the exhibit previously marked for identification as Plaintiff's Exhibit 6 was received in evidence.)

The Court: I think we might save a great deal of time, Mr. Buell, if you would explain what the documents are instead of having the witness say that Exhibit 6 is a tract record. Why don't you get up and say, "I want to offer the following documents," and explain them and get them into evidence?

Mr. Buell: All right, your Honor.

Q. Mr. Miller, did you have any contact with Mr. Chet Parker on the day that he placed the order which you referred to?

A. I don't remember any conversation had.

Q. Did you receive any inquiry regarding the, when the report on this property would be ready between the time that the order was received and the time the report was sent to the Portland office?

A. Yes, there was an inquiry made at the office on August [23] 15th in the morning.

Q. Do you know who the person was that made the inquiry about the report? A. No, I do not.

Q. Could you describe him?

A. Well, he was dressed in woods clothes. That is, woods clothes, clothing for rough wear. He had boots on. He was tall and slim. He had dark hair and combed it straight back, as I remember.

Q. What kind of an inquiry was made?

A. He wanted to know when the report was ready, would be ready.

(Testimony of Edward Miller.)

Q. Did he specify what report?

A. Yes, the report we were making for Mr. Parker.

The Court: Is that man in the courtroom now?

The Witness: Well, there is a man who resembles him, but I couldn't——

The Court: Well, who is he?

The Witness: It is the man in the dark blue suit (indicating).

The Court: That is Mr. Stegmann. You think it is Mr. Stegmann, do you?

Mr. Buell: Yes, we do.

The Court: Go ahead.

Q. (By Mr. Buell): Was the report, in fact, ready at that [24] time?

A. No, it was not ready at that time. I informed him that we would send to Portland and since Mr. Parker was resident in Vancouver, Washington, that we would send the report to Portland, and he could pick it up there.

Q. Following the sending of the preliminary report to Portland, was there any other activity that came to your knowledge regarding this order between August 15th and the time you left on your vacation?

A. Well, we received a notation back from Mr. Muschalie that the amount of the policy was subject to a timber cruise.

Q. Was there anything else besides that?

A. Nothing that I recall.

(Testimony of Edward Miller.)

Q. Then when you returned from your vacation on September 4th did you find that there had been any change as to the status of the order?

A. The purchaser's policy had been typed. It was ready for delivery. The amount had been increased from \$50,000 to \$125,000.

Q. Had Mr. Parker furnished any additional documents in connection with the order?

A. Well, I found in the file a, what appeared to be an assignment of an option.

Q. When is the next time that you saw Mr. or Mrs. Parker?

Mr. Jaureguy: When next time? [25]

Mr. Buell: Well, following his return from his vacation.

The Court: I do not think he has testified that he ever met Mr. Parker or Mrs. Parker.

Mr. Buell: Why, I will straighten that out your Honor.

Q. Did you see either Mr. or Mrs. Parker on the day the order was placed? A. Yes, I did.

Q. Did you meet them?

A. I don't recall whether I met them that particular day or subsequent thereto, but I did meet them, and I knew who they were.

Q. Both Mr. and Mrs. Parker or——

A. Both of them.

Q. Then following your return from your vacation did you have occasion to talk with Mr. and Mrs. Parker at any time before the deed was completed or the deed was executed and recorded?

(Testimony of Edward Miller.)

A. Mr. Parker made inquiry as to whether or not we would convert the purchaser's policy to an insurance policy in the same amount after the transaction was closed, whether or not there would be any additional premium in that respect.

Q. Was any agreement reached as to whether or not you would do that?

A. I agreed to do that without an extra charge because the matter was current. It was one transaction after all. [26]

Q. Then when and how did you first learn of the claim of ownership of the United States in this property?

A. The deed was recorded on September 11th. Mr. Parker wanted his policy as soon as possible so I was over at the courthouse the next morning checking on this particular detail. I was contacted there by Mr. Bert Holtby, who is a forest ranger at Parkdale, as to whether or not we had written title insurance on this particular tract and did I know that the Federal Government claimed ownership. That was the first indication I had personal knowledge of.

Q. Had you issued the insurance policy at that time? A. We had not.

Q. What did you next do with reference to the issuance of the insurance policy?

A. As I remember it, Mr. Parker was in the office late that morning, and I explained to him the fact that the Federal Government was claiming ownership to a portion of the property. I also called

(Testimony of Edward Miller.)

our home office and talked with Mr. Dwyer as to whether or not our position would be any different in issuance of the owner's policy in lieu of the purchaser's policy.

Q. Did you receive authority to issue the owner's? A. Yes, I did.

Q. When was that owner's policy delivered to the Parkers, as you recall? [27]

A. It was either that afternoon or the day following. I do not recall too specifically.

Q. Did Mr. Parker tell you anything about the property or what he had paid for it or how he had acquired it at the time that you notified him of the Government's claim of ownership?

A. I don't recall any statement from him.

Q. Did he at any time tell you what he had paid for the property?

A. Yes, he stated that he had paid one hundred thousand to the Winans and twenty-five thousand to Walter Stegmann.

Q. Did he tell you or say anything to you about Mr. Stegmann's part in the transaction, if any?

A. Well, he made some statement as to the closing of the transaction being required by Mr. Stegmann under the option.

The Court: How long is this testimony going to be?

Mr. Buell: That is all, your Honor.

The Court: Let us take a five-minute recess.

(Short recess taken.)

(Testimony of Edward Miller.)

Cross-Examination

By Mr. Jaureguy:

Q. I don't quite understand when you say that Mr. Parker said that. Are you attempting to quote his very words that he stated, or are you just giving what your impression was, [28] a summary of it?

A. It would be my summary of it.

Q. Would you say that what he explained to you would have been that Stegmann was doing the surveying and that the closing might be delayed on account of getting an accurate description of certain property that was being reserved?

A. I don't know. The discussion came up, I believe, on Wednesday, September 12th.

Q. Wednesday, September 12th, was after the deed was recorded? A. That is correct.

Q. Well, what happened? What else did he talk about that day? Do you know how he happened to be there talking to you on the 12th of September?

A. He was there to secure an insurance policy.

Q. On the 12th of September?

A. That's right.

Q. Well, now, will you repeat—the conversation you had on the 12th was a rather short conversation, was it not?

A. Well, it was my explanation to him of the claim of the Federal Government and remarks made by him.

(Testimony of Edward Miller.)

Q. Well, now, just try and reconstruct it for us, will you? What was said? I don't understand how the question of the closing of the transaction would have any relevancy in the matter that you were discussing at the time. Can you explain [29] how the subject happened to be brought in? That is, the occasion to which you refer was the occasion when he came in order to get his owner's policy; that is correct, isn't it?

A. That is correct.

Q. I do not understand how in connection with his picking up the owner's policy or in connection with your explaining the information you had received of the claim of the Government, how the matter of the closing of the transaction was in any way involved.

A. Well, we had in the file this assignment of option. I cannot remember all of the conversation had, but Mr. Holtby went quite into detail about the transaction at the courthouse with me. The only way I can figure it out now is that I probably asked him who Stegmann was. So far as I knew, he was not in the transaction at all.

Q. The only way you knew him to be in the transaction is that he at one time had an option, and that option was assigned to Parker?

A. That's right.

Q. There was nothing that Parker told you at that time that in any way modified it or controverted it, was there?

A. No.

Q. But he said something about Stegmann having some duty or obligation under the option to do

(Testimony of Edward Miller.)

something in connection [30] with the closing, is that it?

A. Well, Mr. Holtby, as I remember it——

Q. That is the Government man?

A. That is the Government man, yes—had mentioned this Mr. Stegmann.

Q. You met Mr. Holtby, you say, at the courthouse? A. Yes.

Q. You had gone to the courthouse for the purpose of determining whether you could issue an owner's policy? A. That is correct.

Q. Was it while you were looking up the records that he showed up? A. That it right.

Q. Did he indicate to you that he showed up for the particular purpose of talking to you?

A. No.

Q. That is, he was there, and you knew him, and you got to talking with him?

A. That's right.

Q. During the course of your conversation you told him that you were issuing an owner's policy on this property; is that it? A. No, he asked me.

Q. Oh, he asked you. He asked you what property you were issuing it on? [31]

A. Either he was keeping tab of this particular transaction or he was making a current check on properties. They do that.

Q. About how often do they do that?

A. I don't know.

Q. Well, prior to this time how many times had he made a tab on these properties?

(Testimony of Edward Miller.)

A. Well, at least once a month.

Q. Does he come to your office when he does that?

A. No, he does not. He does it at the courthouse through the Assessor's office and the Clerk's office.

Q. Is the fact that he makes it once a month,—I mean, your opinion that he does it once a month,—is that the result of your seeing him there doing it?

A. I don't know; I didn't ask him why he was checking on that particular transaction.

Q. No, I understand that you said that he made a check of these transactions about once a month and that he did it at the courthouse, and I am asking you whether or not that is a result of your own observation or whether that is what somebody told you?

A. That is the result of my own observation.

Q. That is; and those observations had taken place before this date, September 11th, that you told about?

A. That's right. He does not necessarily do it in person, but he was there that particular day. [32]

Q. Prior to that time had you known that he made a check up there on the transactions on properties in and about the Mt. Hood Forest Reserve once a month or not?

A. No, I had not made any particular inquiry.

Q. Well, when did you learn that he or others from the Forest Service made checks at the courthouse approximately once a month about transactions of this kind?

A. I don't know as I could pin any date on that.

(Testimony of Edward Miller.)

So far as I can remember, it was that particular day.

Q. Well, you say that you knew as a result of your own observation that he made checks once a month? A. Well, approximately, yes.

Q. Yes, because you had seen him up there once a month before that time making these checks and investigations; is that true? A. That's right.

Q. Now, I notice on Page 2 of which I think is Exhibit 2—on Exhibit 3 there is the handwritten statement, "All Sections 16 & 32," I think the next word is "through," although I am not sure, "S/O set aside by act of Congress to S/O."

Mr. Krause: State of Oregon, that is.

Mr. Jaureguy: I understand, but when I quote I like to quote exactly. They assume it is the State of Oregon, and I am going to ask the witness when I come around to it.

Q. "—act of Congress to S/O as school lands. Nothing [33] further needed."

Do you know who wrote that?

The Witness: I wrote that.

Q. And "S/O" means State of Oregon?

A. That is right.

Q. Did you get your information from Portland, or is that the result of something you already knew? A. I got it from Portland.

Q. Just tell us about that, will you?

A. In making the examination I could find nothing of record so far as this particular section was

(Testimony of Edward Miller.)

concerned covering the Federal Government. I had temporarily forgotten about school lands. Some of the early instruments had been recorded in Multnomah County and then re-recorded in Hood River County so I called Portland primarily to see whether or not that particular instrument had not been recorded with Multnomah County but failed to be re-recorded in Hood River County, and that is when I got the information or the reminder about school lands.

Q. This was a telephone conversation?

A. Yes, it was.

Q. Do you know who answered it in Portland?

A. Well, it was Helen, Vose I think was the name.

Q. What was that name?

A. Vose, Helen Vose. [34]

Q. Did you get all the information on one telephone call, or did she say she would have to hang up and call you back later?

A. I am not certain about that. There could have been a call back.

Q. You know it to be a fact, do you not, that you cannot invariably rely on title to Sections 16 and 36 automatically going to the State of Oregon?

A. I do now, yes.

Q. You did not know that then? A. No.

Q. I take it that from your conversation at least the person in the home office did not know it either? Did you get that impression? A. That's right.

Q. Have you had occasion either before or since

(Testimony of Edward Miller.)

this telephone call to communicate with the State Land Board to obtain information regarding these Sections 16 and 36? A. No, sir.

The Court: Isn't it 16 and 32, Mr. Jaureguy, not 16 and 36?

Mr. Jaureguy: This says 16 and 32.

The Court: But you have been saying 36.

Mr. Jaureguy: I have been saying 36——

The Witness: Well, 36, I think, is correct, [35]
sir

Mr. Jaureguy: I have been keeping still here because I did not want to display my ignorance, but I think 36 is correct.

The Witness: I will agree with you.

The Court: It may very well be, but the notation here is 32.

Mr. Jaureguy: That is right, but the Township, the section involved in this case is 16 so that that is not of great importance.

Then S/O means State of Oregon as Mr. Krause told us? A. Yes, sir.

Q. So that notwithstanding the fact that you had a prior—that there was a prior policy on this case, you examined it from the beginning?

A. Yes, I did. The chain of title is very brief so I went back of this particular deal.

Q. Now, in your office at that time do you know whether there was any correspondence relating to the settlement of a claim under the prior policy?

A. I wasn't able to find any.

Q. Well, have you learned otherwise, that there

(Testimony of Edward Miller.)

was some correspondence between the Portland office and the Hood River office when that claim was settled?

Mr. Strayer: With what company? [36]

Mr. Jaureguy: Yes, the home office of the Pacific. I should not even have said home office. I should have said that there was correspondence between the Portland office of the Pacific and the Hood River Abstract Company, Hood River, regarding that settlement.

The Witness: Yes, I have learned since then.

Q. (By Mr. Jaureguy): Have you searched the files in the Hood River office of the Title and Trust Company to find whether that correspondence was in that office at the time? A. I have.

Q. You have not been able to find it?

A. That's right.

Q. The title policy you knew was there—I mean, a copy of the title policy you knew was there?

A. That's right.

Q. Where was that? Was that in a special folder, or where was it?

A. Yes, it was in a special folder under the File No. 109.

Q. What else was in that folder?

A. There is a chain of title. There was an affidavit made by a prior County Assessor. I will take it apart if you want me to read it.

Q. Well, no, I do not care. I am not quite sure, but, anyway, there was nothing in the folder, none of that correspondence was in the folder? [37]

A. None of it.

(Testimony of Edward Miller.)

Q. I suppose in a well ordered and regulated office that correspondence would have been in that same office; would it not?

A. It should have been, yes.

Mr. Strayer: Just a moment. I will object to that question. This is a different company entirely he is questioning about, and I do not think it is material whether the other company was—conducted its housekeeping in a proper manner or not.

The Court: Well, I do not think we need any testimony on that, Mr. Jaureguy. Go ahead.

Q. (By Mr. Jaureguy): As I understand it, you were in charge of the Hood River office, were you not? A. That's right.

Q. Could you tell us how long you had been there?

A. It was in the fall of 1946 that I first went out.

Q. You went there shortly after it was purchased, then? A. That's right.

Q. Do you know what month it was purchased?

A. The office of the branch, as a branch, was opened in June, if I remember correctly, of 1946.

Q. You had been there, then, since the fall of 1946? A. Yes, sir.

Q. Had you, either through gossip or from any other source, [38] had during the five years after you got there, had you heard of this claim that the Pacific had paid on some of that property up there at Lost Lake? A. No, I had not.

Q. That had never come to your attention?

(Testimony of Edward Miller.)

A. No, sir.

Q. Do you know whether your company issued any abstracts or continuation of an abstract on this same property after the Title and Trust Company took it over?

A. No.

Q. Do you mean they didn't or you do not know?

A. They did not.

Q. Now, you have described somebody who, some man who asked you on October 15th—August 15th, rather, 1951, when the report would be ready?

A. Yes.

Q. You have told us about everything except his approximate age. Could you tell us what his approximate age was as you figured it?

A. Well, somewhere around 25 to 30.

Q. Do you think it would have been possible that he was under 20?

A. No, he looked a little older than that to me.

Mr. Jaureguy: That is all. Thank you.

The Court: Mr. Ryan? [39]

Cross-Examination

By Mr. Ryan:

Q. Do you keep written memorandums regarding transactions relating to a policy of people calling you up and that sort of thing?

A. No, not every conversation. If they change a policy or something like that, we make a notation.

Q. Is your recollection of this man who came in there on the date you gave based upon just mem-

(Testimony of Edward Miller.)

ory, or did you have a written memorandum of that?

A. Memory only.

Q. Memory only. Did you inquire his name?

A. No, I did not. We met on the street, as a matter of fact.

Q. You met on the street?

A. We met on the street.

Q. How long a conversation took place?

A. It could not have been more than a minute.

Q. Did you ask him what his interest in it was, in the policy?

A. Well, he said he was a friend of Mr. Parker and was there, was in Hood River for Mr. Parker, and wanted to know if he could take it down to him, to Mr. Parker.

Mr. Jaureguy: Would you read that, please.

(Last answer read by the Reporter.) [40]

Q. (By Mr. Ryan): Can you recall any other details of his dress other than he was dressed as a woodsman?

A. Well, he had on logging boots, half boots. It was a warm day. He didn't have a coat on, if I recall.

Q. Had you seen the defendant Stegmann with the exception of that, at any time other than that, if you did see him at that time, until you saw him here today?

A. No, sir.

Mr. Ryan: That is all.

(Testimony of Edward Miller.)

Cross-Examination

By Mr. Lindsay:

Q. Mr. Miller, I would like to know about your contacts with Mr. Parker. How many times did you see him or talk to him?

A. He was in the office several times. I don't recall the number of times, but he came in when he placed the order. He was in other times.

Q. Let us take that first occasion he had placed the order which you fix as August 13th.

A. That is correct.

Q. Now, did you personally meet him at that time?

A. I don't recall whether I did or not, but I met him subsequent.

Q. What time of the day would you place [41] that?

A. It would have been in the morning on August 13th.

Q. Was Mrs. Parker with him?

A. I think she was the first day.

Q. What is your next contact with Mr. Parker?

A. Well, I don't know; I can't place any date on it.

Q. Can you definitely place a delivery of the owner's policy on Tuesday, September 12th, I guess that would have been——

A. That was on a Wednesday. No, I cannot definitely place the actual delivery of the policy

(Testimony of Edward Miller.)

that particular day, but it would not have been before that day. It could have been subsequent thereto.

Q. Well, the discussion you had with Mr. Parker concerning the claim of the Government to ownership, did that occur at the same time that you delivered the owner's policy or prior to that?

A. Prior to delivery because the policy had not been typed at the time we discussed that phase.

Q. So you would have had a discussion at the time that you told him about the Government's claim and then another one at the time you delivered it; is that correct?

A. Not necessarily, not another discussion. It was then just a matter of his coming for the policy.

Q. Now, at what point did you have this discussion with Mr. Parker concerning Mr. Stegmann?

A. I don't remember exactly, but as nearly as I can place [42] it, it was on the morning of the 12th, September 12th.

Q. Did Mr. Parker in his conversation, this particular conversation, tell you what part, if any, Stegmann had played in the purchase of this land?

A. Well, I don't remember whether he volunteered the information or whether or not I asked him the question. He did have this so-called assignment, and I had learned of this Mr. Stegmann making inquiries up at the Parkdale Ranger Station.

Q. Did he tell you Mr. Stegmann had been the person that closed the deal?

A. Yes, I think he did, that his option required that.

(Testimony of Edward Miller.)

Mr. Lindsay: That is all.

The Court: That is all. All right, Mr. Buell.

Mr. Buell: I have no further questions, your Honor.

Mr. Jaureguy: I would like to ask him another question.

Q. (By Mr. Jaureguy): Did he point out to you the language of the option that required it?

A. No, he did not.

Mr. Jaureguy: Now, I want one more question. I don't suppose you are planning on staying in the courtroom during the rest of the trial?

A. I could, or I could come down again.

Mr. Jaureguy: I would like to say that the Parkers think that they know who it was that asked that question on the 15th of August, and I wanted to know if counsel wanted advance [43] notice of when we would produce him.

Mr. Strayer: Would you care to give us the name?

Mr. Jaureguy: I do not know what good that would do.

Mr. Strayer: We might go out and look him over.

Mr. Jaureguy: He is not in town. We will have him here when we put on our case.

The Court: Well, is that a matter of great significance?

Mr. Jaureguy: I beg your pardon?

The Court: Is that a matter of great significance whether Stegmann saw him or somebody, some other young person?

(Testimony of Edward Miller.)

Mr. Jaureguy: No, I think it is just the psychology of them giving a lot of weight to it, and so I thought I had better look into it.

Mr. Ryan: We have the same feeling, your Honor, since we take the position that Mr. Stegmann was not there that day. The testimony is not too definite.

Mr. Jaureguy: Well, we will produce him anyway, and I will try to tell them in advance if they want to know.

The Court: You notify Mr. Buell when you are going to have him here, if you want the witness down there on that day.

Mr. Jaureguy: Of course, on further investigation they may find they are mistaken, but they are pretty well settled now that they know who [44] he was.

Mr. Strayer: That they know who he was?

Mr. Jaureguy: Mr. and Mrs. Parker are pretty well settled that Mr. and Mrs. Parker know who he was.

The Court: Well, there was somebody who contacted him, and he may be mistaken about the identity of the person.

Mr. Jaureguy: We are sure he is mistaken. We feel confident of that, almost certain that they know who he was. In fact, they are certain, but they might want to ask him so I will give you the name right now. He is Myron Parker, the son of Mr. and Mrs. Parker.

The Court: That doesn't mean anything to me.

(Testimony of Edward Miller.)

Mr. Jaureguy: No, I know it, but they asked me for his name, and so I gave it.

The Court: Are there any further questions? You are excused. You are excused from further attendance at the trial.

(Witness excused.) [45]

VANNE VOSE

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Miss Vose, you also live in Hood River, do you? A. Yes, sir.

Q. Were you an employee of the Title and Trust Company in the Summer of 1951?

A. Yes, sir.

Q. Are you still? A. Yes, sir.

Q. What are you employed as; what is your work?

A. I guess you would call it an office clerk.

Q. Do you remember meeting Mr. or Mrs. Chet Parker in connection with the issuance of title insurance involved in this case? A. Yes, I do.

Q. When was it that you first met Mr. Parker?

A. The day he placed the order.

Q. Would you tell in your own words or tell us as closely as you can just exactly what was said by

(Testimony of Vanne Vose.)

Mr. Parker when he placed the order and what was discussed between you?

A. Well, about all I remember is he brought in this small [46] slip of paper and placed the order, and it had on that the amount and name of the owner. I was a little uncertain as to whether that section was in our county or not so I think we checked on the Metsker map to see if it was or not. Then I pulled out the file and found the prior policy, and that is about all I remember.

Q. Was there any notation on the prior policy concerning a loss paid by the Pacific Abstract and Title Company?

A. I didn't look for anything of that kind, but I don't think there was.

Q. Did you have any conversation with Mr. Parker as to the amount of title insurance to be placed on the property?

A. Yes, sir; I always ask for the value of the property if I can possibly get the value of the property, and I noticed there was quite a difference in the amount, and he said something that that was due to the increase in the value of the property the last few years.

Q. What were the amounts that were mentioned?

A. Well, he finally gave me the amount of \$50,000, and it was due to change if necessary.

Mr. Strayer: Due to what?

A. He thought it might be more or less. He didn't know for sure.

(Testimony of Vanne Vose.)

The Court: The \$50,000 might be more or less?

The Witness: Yes, he said he didn't want to set a [47] definite amount.

Q. (By Mr. Buell): Now, what arrangements were made, if any, as to when and where the report was to be picked up?

A. Mr. Parker said that he would call for it himself. I believe it was on a Friday.

Q. Do you have any recollection or know of any inquiry being made following the date the order was placed as to whether or not the report was ready?

A. I remember that Mr. Stegmann inquired about the report the day before the report was promised. He said he was going through town and that Mr. Parker asked for him to check.

Q. Where was Mr. Miller at that time?

A. He was at the courthouse at that time.

Q. Now, when you say Mr. Stegmann called, did he give you his name at the time?

A. No, he did not. I didn't know who he was at that time.

Q. Did you ever see him again?

A. I don't believe I ever did.

Q. When did you first see him in connection with this trial? A. That was the first time.

Q. Was that before the proceedings had started yesterday, or after they had started?

A. Oh, you mean at the trial here? I recognized Mr. Stegmann the moment he walked in the back door here. [48]

(Testimony of Vanne Vose.)

Q. Now, following the placing of the order when was your next contact with Mr. Parker, if any?

A. Well, if I recall correctly, it must have been when I delivered the purchaser's policy to him. That would have been the day after Labor Day.

Q. What conversation did you have with Mr. Parker at that time?

A. Well, he informed me that he had tried to contact me at home, but I was gone, and that he had checked through the Police Department, I believe.

Mr. Jaureguy: Checked through what?

The Witness: The Police Department in Hood River.

Q. (By Mr. Buell): Did he state what he had tried to contact you in connection with?

A. I believe it was on a Saturday.

Q. What was it about that he was trying——

A. He was wanting me to get the policy for him, the purchaser's policy, from the office because the office was to be closed for three days.

Q. Did you have any other discussion with Mr. Parker on that day following Labor Day, or any other day?

A. Well, I can't recall for sure, but it seems to me that that may have been the time he inquired about changing to an owner's policy.

Q. What did you tell him about that? [49]

A. I told him that was unusual, a new form, but I would have to call Mr. Miller.

Q. Where was Mr. Miller at that time?

(Testimony of Vannie Vose.)

A. I believe he was at the courthouse at that time.

Q. Did you get in touch with Mr. Miller?

A. Yes, sir; I called Mr. Miller.

Q. What did he do?

A. I believe he told me at that time that yes, that could be arranged. I don't believe he came back to the office at that time. I can't remember.

Q. Am I correct that you are not able—that you were not definitely placing that conversation on September 4th?

A. No, sir; I wouldn't be sure.

Q. Well, could it have been prior, before September 4th, that that conversation took place?

A. It could have been, but I don't think it was.

Mr. Buell: You may examine.

Cross-Examination

By Mr. Jaureguy:

Q. Now, I think you said at the time that Mr. Stegmann inquired about the report was the day before it was sent?

A. It was the day before we promised it, which I believe was on a Thursday if I am not mistaken. We promised it on Friday, and I think he called Thursday. I might—— [50]

Q. I mean to say Thursday.

A. I may be wrong.

Q. 1951, Thursday, was the 16th of August.

(Testimony of Vanne Vose.)

A. I may be wrong about the dates. I don't know.

Q. Anyway, it was the day before you promised it?

A. It was the day before we promised it, the day before Mr. Parker was to call for it.

Q. The policy—the report itself is dated August 15th. I wonder if you recall that?

A. No, I don't.

Q. Well then, did you know about somebody asking Mr. Miller when it could be obtained?

A. No, I wasn't—that wasn't while I was around.

Q. When did you first learn that somebody had also asked Mr. Miller?

A. He came back from the courthouse, and I told him that someone had called for Mr. Parker's policy. I wonder if we would have it out, and he said that, oh, yes, somebody had already asked him about that, he had met him on the street.

Q. Neither of you at that time had any idea whatever as to the name of the person that asked?

A. No, sir; I didn't.

Q. Did he indicate to you that it was the same day that this man asked him that—— [51]

A. Yes, it was the same day.

Q. ——same day?

A. Yes, within, oh, an hour or two.

Q. Did you try to ascertain by your discussions as to whether it might have been the same man?

A. No, I just assumed that it was.

Q. Now you say you have checked the Metsker

(Testimony of Vanne Vose.)

map to determine whether it was in Multnomah County.

A. Yes, I looked at the Metsker map because I was uncertain as to whether that section is in our county.

(Map of Township 1 S., Range 8 E., W.M., was thereupon marked Plaintiff's Exhibit 110 for Identification.)

Q. I want to hand you what has been marked for identification as Pre-Trial Exhibit 110 and ask you whether that is the sheet of the Metsker map that you examined?

A. Yes, well, it looks to me as if it is, but I wouldn't—

Q. Can you find the property there?

A. Yes, I see Section 16.

Q. On this sheet it has across the acreage there the word "W. R. Winans"? A. Yes, sir.

Q. Was that true on that one you saw?

A. I am not sure, but I imagine it is.

Q. Now, you saw that on the day you got the file on this? [52]

A. Yes, I pulled the file out.

Q. And you noticed that there was a policy there? A. Yes.

Q. But you didn't look to see if there were any notations on the policy?

A. No, it is just a few yellow sheets clipped together, and I was more interested in the chain.

Q. More interested in what?

(Testimony of Vanne Vose.)

A. In the chain, to see if we had a chain in the policy on that.

Q. Just to see whether you had one?

A. Yes, and show it issued a policy.

Q. But you didn't look to see whether there was any notation of any prior payment on the policy?

A. No, I pulled that out more or less to get the prior amount so that I could write the order and so forth.

Q. I appreciate the information, but what I want to know is whether for that reason or for any other reason you did not look to see whether there had been any payment on it? A. No, sir.

Q. Now, when Mr. Parker came in and gave you that slip, is that what he asked you, was that he wanted to get a title report? A. Yes, sir.

The Court: Do you first look at the tract book to find [53] out whether prior policies had been issued?

The Witness: Yes, sir.

The Court: And the tract book showed that a prior policy had been issued?

The Witness: Yes.

Q. (By Mr. Jaureguy): And then did you get a copy out of the file?

A. Yes, got the policy out of the file.

Q. I do not understand why Mr. Stegmann called you—why he said he called you, tried to call you the Saturday before Labor Day.

A. It was Mr. Parker who tried to.

Q. Oh, Mr. Parker?

(Testimony of Vanne Vose.)

A. Mr. Parker; he wanted his policy because he was not going to be able to get it for three days otherwise.

Q. Oh, that is what he told you?

A. No, he did not tell me that.

Q. Well,—

A. He wanted it anyway, I know.

Q. What did he tell you?

A. He didn't tell me anything.

Q. Well, how did you find out he tried to call you the previous Saturday?

A. He told me that.

Q. Oh, he told you that?

A. Yes, sir. [54]

Q. That is all he told you?

A. Well, I don't suppose that is all, but I cannot—

Q. That is what I mean, that is all you can recall he told you? A. That's all I can recall.

Q. This was on the day after Labor Day?

A. That is when he was in for his purchaser's policy.

Q. On the 30th I think you had accepted the premium for that and given a receipt for it?

A. I don't recall whether I did or not.

The Court: Is there any dispute about that?

Mr. Buell: No.

The Court: They admit it.

(Document, Title and Trust Company bill, August 30, 1951, was thereupon marked defendants Parker Exhibit 106 for Identification.)

(Testimony of Vanne Vose.)

Q. (By Mr. Jaureguy): I show you 106 and ask you whether you recognize that; that is, Pre-Trial 106? A. Yes, sir.

Q. Those initials there, I think they are "V.V.," are they not? A. Yes, sir.

Q. Are those your initials?

A. Yes, they are. [55]

Q. So you issued that receipt?

A. Yes, I did.

Q. You would say on looking at that receipt that you accepted the premium on August 30th?

A. Yes, I would.

Q. That is all.

The Court: Mr. Ryan.

Cross-Examination

By Mr. Ryan:

Q. You didn't ask the gentleman or the person who called his name?

A. You mean Mr. Stegmann?

Q. Whoever called in there, did you ask him his name? A. No, I didn't.

Mr. Ryan: That is all.

The Court: Mr. Lindsay?

Mr. Lindsay: No questions.

Mr. Buell: I have one more.

Redirect Examination

By Mr. Buell:

Mr. Buell: I wonder if the Crier can get Exhibit 4.

(Testimony of Vanne Vose.)

Q. Miss Vose, why did you write Mr. Parker's order up then as for an order—an owner's policy of title insurance? [56]

A. Well, we don't take an order for just the title report, for one thing. It is an order for a policy, and I probably asked him, I don't know whether he was going—it was a cash deal, and he was going to get a deed or whether he was buying on a contract. I don't know unless it is for that reason that I got the idea that he wanted an owner's title insurance policy.

Q. The Crier is handing the witness Exhibit 4. Does that contain the policy that you referred to that you looked at when Mr. Parker gave his order?

A. Yes, I am quite sure it does.

Q. Can you identify it in the file there?

A. Yes, I have it here.

Q. Is that the original policy you are referring to or what?

A. Well, this is Mrs. Sinclair's file and a copy of her policy.

Mr. Buell: I have no further questions.

Mr. Jaureguy: Could I see that Exhibit? I believe I have a copy of that file.

The Court: It is not the original policy.

Mr. Jaureguy: It is a copy of a typewritten portion of it.

The Court: Yes.

Q. (By Mr. Jaureguy): You looked at this? Did you examine every page of it? [57]

A. No, I probably did not. I probably took the

(Testimony of Vanne Vose.)

names to be sure that I had names in full, and the amount.

The Court: Any further questions?

Mr. Jaureguy: No.

The Court: That is all, Miss Vose. You are excused from further attendance at the trial.

(Witness excused.)

Mr. Jaureguy: I believe Exhibits 2, 3 and 4 were received, but I do not think Exhibit 6 was. If you are not, I want to offer it at this time, the index of the tract.

The Court: I ordered 6 admitted when I looked at it. How about the old policy, the file? Was that 4?

Mr. Buell: That is 4.

The Court: All right. It is admitted.

(Thereupon there was discussion off the record.)

The Court: We will recess until 1:15.

(Noon recess taken.) [58]

Afternoon Session—1:15 o'Clock

Mr. Strayer: If your Honor please, I want to correct a misstatement that I made to the Court this morning which I assure you was entirely due to my ignorance. I was under the impression at the time I was on my feet that this title policy was issued, that the old title policy in Hood River was a title policy for \$2,000 on Lot 1.

The Court: I knew that.

Mr. Strayer: I find I am wrong on that, and the total for the old policy was \$8,000. The title company relied on what appeared to be a title policy for \$8,000.

The Court: It covered Lots 1 and 2, the original policy. Then it was cut down to \$2,000 on Lot 1.

Mr. Strayer: Your Honor was very considerate in not correcting me.

Mr. Buell: We will call Mr. Richard [59] Sythe.

RICHARD SYTHE

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Sythe, where do you reside?

A. Portland, Oregon.

Q. Where are you employed?

A. Title and Trust Company, in the main office.

Q. Were you so employed in August, 1951?

A. Yes, sir.

Q. Were you in the Portland office?

A. Yes, sir.

Q. What was your position at that time?

A. I was a clerk. My duties there were to wait on the public and do certain other things around the office, meet the public when they came in.

(Testimony of Richard Sythe.)

Q. Did you have occasion in August of 1951 to deliver a preliminary title report on this Lost Lake property to Mr. Chet Parker?

A. I delivered a report that was called for from our Hood River branch, and it was addressed to Mr. Parker, yes.

Q. Are you able to recognize the gentleman seated immediately behind Mr. Jaureguy? [60]

A. Yes, I believe that is the man who called for the report.

Q. Was he alone when he came in to get the report, or was somebody with him?

A. As I recall, there was a lady with him.

Q. Would the Bailiff please hand the witness Exhibit 3. I do not have it. It is already received, your Honor.

Mr. Sythe, referring to Page 7 of that exhibit, Exhibit 3, which was just handed to you, can you find that? Have you found Page 7? A. Yes.

Q. In whose handwriting is the phrase, "Collected \$25 for report charge"?

A. That is my handwriting.

Q. Following that phrase is the phrase, "Deal is subject to Timber Cruise." What, if anything, did Mr. Parker tell you with regard to a timber cruise?

A. I don't recall anything that he said, only that he must have said this or I would not have written it down. There was some question regarding the bill, and the deal.

(Testimony of Richard Sythe.)

Q. Was there a bill with that preliminary report? A. As I recall it, there was.

Q. Did some question arise as to the amount of the bill?

A. Well, no question regarding the amount of the bill as far as the premium was concerned, only that apparently the [61] deal was not ready to go through, and we were asked to bill it out on a report charge rather than to put the full premium at that time.

Q. Did you set the \$25 report charge yourself, or did you have to consult somebody else?

A. No, I consulted Mr. Muschalie who is our treasurer and told him of the facts, and he decided that that would be the figure.

Mr. Buell: No further questions.

Cross-Examination

By Mr. Jaureguy:

Q. You say you think a lady was with him?

A. Yes, I do.

Q. Ordinarily in the Title and Trust Company are preliminary title reports labeled "Preliminary Title Report"?

A. Not ordinarily, but when an order is taken it is usually taken as an order for a certain type of policy.

Q. Well, what type of a report does the company get out when a person orders a title report?

A. We don't take orders as such.

(Testimony of Richard Sythe.)

Q. You mean if an attorney calls at the Title and Trust Company and says, "I would like to have a title report on such-and-such place," you tell him, "I don't take title reports"? [62]

A. If they want only a report, we suggest what is known as a Lot Book Report.

Q. I am not saying that. An attorney calls up and says, "Now, all I want is a title report. I don't want anything else." I am not speaking about that type of a case. I am talking about the type of a case where an attorney calls up and says, "Will you get me out a title report on such-and-such property?" Then what is said or done?

A. I always make it a habit of telling them that we do not issue a title report as such; that they are issued in connection with a policy, and that if he is not certain at that time what type of policy he wants we go ahead and place an order, and he can determine later what he wants.

Q. That answer goes where an attorney calls and says—you answer the phone—"I wish you would get me out a report on such-and-such property"?

A. That's right; we always try to ascertain whether there will be a policy and the amount of it for billing purposes.

Q. In other words, if an attorney calls up and says, "Will you get me out the title report on such-and-such property," do you mean to say that you always answer him, "I would like to find out what kind of policy"?

(Testimony of Richard Sythe.)

A. Yes, sir; we always say, "Is this report in connection with an owner's policy, purchaser's policy or mortgages on the policy?" [63]

Q. You say you always do?

A. Yes, I most generally always do.

Q. Of course, in your branches is it more customary to give out title reports and collect a fee for those than it is in the Portland office?

A. I am not familiar with the procedure in the branches.

Q. You have been with the Title and Trust Company how long?

A. Four and a half years.

Q. Have you been in the same type of work all the time?

A. No, I worked in the plant department for a year prior to the time I met the public.

Q. What did you do in the plant department?

A. I was a poster.

Q. That is, for a year? A. Yes.

Q. Then you have been in your present occupation for three years and a half? A. Yes.

Q. Now, there was not any question in Mr. Parker's mind when he came in that all he wanted to pay for was a title report?

A. Apparently not.

Q. Did you get the impression that he had at some prior time thought he was going to get, pay for something more? A. No. [64]

Q. Did he give you the name of any company that might be taking title or anybody that might be

(Testimony of Richard Sythe.)

taking title? A. I don't recall.

Q. Did he say what kind of a deal it was that he—or do you recall anything he said with respect to a timber cruise? A. No, I don't, just——

Q. In other words, your only reason for saying that he said something about a timber cruise is because you have it here on this document?

A. That is right.

Mr. Jaureguy: That is all. Thank you.

The Court: Mr. Ryan?

Mr. Ryan: No questions.

The Court: Mr. Krause?

Mr. Krause: No questions.

The Court: That is all.

(Witness excused.)

Mr. Strayer: We are calling Mr. Parker as an adverse party. [65]

CHET L. PARKER

was thereupon produced as an adverse party in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

The Court: I was just going to say, Mr. Strayer, I do not think that is necessary to state that. We assume that all adverse parties are adverse witnesses.

Direct Examination

By Mr. Strayer:

Q. Mr. Parker, where were you living at the time that this Winans transaction first arose?

(Testimony of Chet L. Parker.)

A. I think my residence was at Vancouver, Washington.

Q. How did you first obtain knowledge of the Winans property?

A. Well, as I remember it, Mr. Stegmann told me of it.

Q. When and where did that occur?

A. Well, I think it was at McMinnville, Oregon.

The Court: I did not hear that.

The Witness: At McMinnville, Oregon.

Q. (By Mr. Strayer): At McMinnville, Oregon, on what day?

A. Well, I think it was on a Sunday.

Q. Can you give the date?

A. Well, I can't place the date exactly.

Q. Approximately?

A. Well, I think it was on the 12th probably.

Q. 12th of August, 1951? [66] A. Yes.

Q. Now, the assignment of option, I believe, is dated August 13, 1951. Does that help you in placing the date when you first learned of it?

A. Well, if the 13th, the date is put in correctly, why, then it should have been the 12th.

Q. In other words, it was the day before the assignment of option? A. Yes.

Q. Where in McMinnville, did you see Mr. Stegmann that day?

A. I believe it was at my brother's property and Mr. Stegmann's.

(Testimony of Chet L. Parker.)

Q. Your brother's name is Oscar Parker, is it not? A. Yes.

Q. And his place adjoins Mr. Stegmann's in McMinnville? A. Yes.

Q. How did it happen that you were in McMinnville that day?

A. Well, it concerns some equipment my brother was working on that belonged to me, as I remember.

Q. That is, you made a business trip down from Vancouver to talk with your brother about that?

A. Yes, I think that is what it was.

Q. Did you know that Mr. Stegmann was going to be there?

A. No; no, I don't believe I did. [67]

Q. How long before that had it been that you had seen or talked with Mr. Stegmann?

A. That I don't remember.

Q. Do you have any recollection of having talked with him recently?

A. Very possibly I could have.

Q. At that time did you have some business transactions pending with Mr. Stegmann?

A. Well, we had—he owed me some money.

Q. Was that all of the business between you?

A. We had a loan commitment that he could have called about, any checks that he was supposed to call about before he placed them with the bank for collection.

Q. All right; now, I believe that a check had been written on August 11th for \$1,000 by Mr. Stegmann and delivered to Mr. Winans, and I be-

(Testimony of Chet L. Parker.)

lieve the evidence will show that that check was deposited in the Hood River Bank on August 11th, which would be the Saturday before the Sunday, August 12, on which you talked with Mr. Stegmann. Now do you recall Mr. Stegmann calling you regarding that check?

A. No, it is a little faint in my memory, but it seems like the bank, I happened to be down at the bank. They said they had a check in. They wanted to know what to do with it. It seems like that was the check, but I am not sure that was the check. It certainly was some check. I [68] happened to be down there.

Q. Well, then, your best recollection is that Stegmann had not called you before going down to McMinnville on August 12th with regard to the \$1,000 check?

A. Well, he could have, and he could not have, and I would not remember it a year and four months later.

Q. Well, did he ever talk with you about a \$1,000 check before this trouble arose?

A. He would have had to have notified my wife or myself.

Q. Did he talk with you about it?

A. I am a little confused on the question.

Q. Well, I am wondering whether it is your recollection that Mr. Stegmann ever talked with you about the \$1,000 check before your talk with Stegmann on August 12th at McMinnville?

(Testimony of Chet L. Parker.)

A. No, I do not think there was anything made aware of it as far as I am concerned.

Q. Then your first knowledge of the Winans transaction was on August 12th when you saw Mr. Stegmann at McMinville? A. Yes.

Q. How did it happen that you talked with that day? A. Pardon me?

Q. How did it happen that you talked with Stegmann on that day?

A. Well, he was at my brother's place or right adjacent there. They both—I think he was out in his garden, as I remember, [69] and I was standing there, and it was a nice day, talking to my brother, and I think he said "Hello" or I said "Hello." Maybe either one of us did. At any rate, we started talking and he brought up the subject of having some timber.

Q. How did he bring it up? Just relate the conversation.

A. Well, I cannot relate the conversation exactly.

Q. As nearly as you remember it.

A. I could not relate the conversation, and certainly there was nothing at that time to make me exactly remember the words.

Q. I appreciate the fact that you cannot remember the exact words, but give me the substance of the conversation.

A. Well, he had some timber to sell me, and he told me approximately the area it was in, and I was absolutely interested.

(Testimony of Chet L. Parker.)

Q. You were absolutely what?

A. Interested.

Q. Well, did he tell you how much it was?

A. I do not know whether he did or not.

Q. All you can remember is that he said that that he told you he had some timber in the area of Hood River?

A. Good timber.

Q. Good timber? A. Yes.

Q. You do not remember whether he mentioned the amount or [70] not?

A. No, I do not.

Q. Did he mention who owned the timber?

A. I don't know whether he did or not.

Q. Did he mention whether he had a contract on it?

A. At that time I don't know whether he did or not.

Q. Did he mention at what price the timber could be bought?

A. I do not remember that.

Q. You don't remember any other details then about that conversation?

A. Not at this time absolutely, no.

Q. What do you mean by "at this time"?

A. Well, I have notes that I made at various times. Naturally, I refer to them, but as I sit here I can't remember absolutely what went on at that particular time.

Q. Well, I will be glad to have you refer to any notes that you have, Mr. Parker, giving your testimony here. Is that the diary that was an exhibit in the case, Mr. Parker?

A. I would presume——

Mr. Jauregui: There is no diary exhibit. There

(Testimony of Chet L. Parker.)

has been a diary marked as Pre-Trial Exhibit under the Judge's ruling, which should be done to refer to it, so it is marked.

The Court: Do you have it?

Mr. Strayer: May I have that exhibit?

Mr. Jaureguy: Yes. [71]

Mr. Buell: 115 and 115-A.

The Court: Is that a sealed exhibit?

Mr. Jaureguy: No, your Honor, it is not. Everybody has seen it. I have given them opportunities to see it because it is not to be used for purposes of impeachment.

The Court: What is that?

Mr. Jaureguy: I mean by me.

The Court: As I recall, I ruled that you would determine whether or not a sheet had any relevancy to this controversy. If it did not, you were at liberty not to show it in the exhibit. Was not that the ruling?

Mr. Jaureguy: I don't recall. I think that perhaps your Honor has in mind some other question that I might have asked. I asked the question whether or not—I do not think that this is important in the present setting, but I asked your Honor whether or not a witness would be permitted to refresh his memory by looking at something unless it had a pre-trial number, and you advised me that the procedure here is that it should be a pre-trial exhibit, and I understood at the time and still do that unless it is for purposes of impeachment then

(Testimony of Chet L. Parker.)

everybody is entitled to look at it and put a pre-trial number on it, so they have all seen it.

The Court: I thought that this came up on your motion to prevent the use of the diary in connection with the taking of certain depositions, and at that time I ruled that—or [72] you had stated that this diary had a number of other items not connected with this controversy, and you saw no need of putting in that diary.

Mr. Jaureguay: Yes, I have obliterated, there has been obliterated from photostatic copies two or three particular matters, and the context above and below, I believe, will indicate to them that I might have good reason for obliterating it.

Mr. Buell: Those matters were with reference to privileged communications of attorney and client, subsequent transaction.

The Court: Well, wait until Mr. Jaureguay objects, and then we will talk about it.

Mr. Jaureguay: You will wait a long time, I think, then, your Honor.

Mr. Strayer: Will you hand this exhibit to the witness, please.

Mr. Jaureguay: I think the record should show, and I want it to show, that the diary has been produced by me at the request of Mr. Strayer.

Q. (By Mr. Strayer): Mr. Parker, you have in your hand Pre-Trial Exhibits 115 and 115-A. Now, are those the notes to which you made reference which would refresh your recollection?

A. Yes. [73]

(Testimony of Chet L. Parker.)

Q. Are there any notes that you had reference to, are there any other notes that you know of that would aid you in placing dates or conversations?

A. No.

Q. All right. Now, will you refer to your notes. I notice, by the way, that they are starting out on August 13. Is that when you started keeping your diary?

A. No, I have had practically all my life a diary.

Q. What is the significance of the fact that this exhibit starts on the 13th? Is that because of that being the date when you first acquired an interest in the property?

A. Well, I suppose so. I can't—

Mr. Jaureguy: That is the first page of the diary that has any reference whatsoever to this Winans or anything connected with Winans.

The Court: This diary is a loose-leaf paper, is it?

Mr. Jaureguy: That is correct.

The Court: Mr. Jaureguy was requested to bring only those sheets which have any relevancy to this controversy.

Mr. Strayer: I see.

Q. And the first entry that you have in your diary with reference to this transaction is on August 13th; is that correct?

A. That is what I have at my disposal here, yes.

Q. Do you recall anything in your diary before August 13th [74] which would have reference to this controversy?

(Testimony of Chet L. Parker.)

A. Not without reading it—August 12th, I would not know for sure. I do not know what August 12th said because I wrote it probably a day or two after August 12th, and, there again, it has been so long ago I would not be able to remember.

The Court: Mr. Jaureguy, will you vouch for the fact that there is nothing prior to that date pertaining to this transaction; is that not right?

Mr. Jaureguy: I do.

Mr. Strayer: Then we will take it as an accepted fact that there is nothing earlier in the diary, earlier than August 13th, relating to this transaction.

Q. Now, is there anything there, then, that would remind you of your conversation, Mr. Parker, with Mr. Stegmann on August 12th?

A. No, not especially. It seems like he might have given me the description on August 12th—or the Sunday, the Monday I went out. I am not sure about that, but it seems like he did.

Q. Does it also seem like he could have given you the price at which it could be bought?

A. Well, I would not say he did or didn't.

Q. Then what arrangement did you make with Mr. Stegmann?

A. To meet him on August 13th, as I remember it.

Q. Where were you to meet him? [75]

A. Lost Lake or Hood River.

Q. Your counsel has called to my attention the entry on your diary of August 13th, Mr. Parker,

(Testimony of Chet L. Parker.)

which starts out, "Walt has an option on I-E-S-N, Section 16."

Now, does that aid you in recalling whether you learned about that on the 12th, or is it possible it was the 13th before you learned about that option?

A. No, I think it was the 12th that he handed me,—of course, that is purely from recollection, but I believe he handed me the subdivision the 12th.

Q. Now, you will notice the second paragraph of that entry under August 13th refers to the fact that, "He wants \$25,000 for a total price of \$100,000. Stegmann has paid down \$1,000 and is to pay out of the money I pay him another \$4,000 on election to purchase."

Is it your recollection that that entry was made after you had been up to the lake at the property and that information consequently received at that time? A. Yes.

Q. You do not think that that was told to you on the 12th?

A. I don't know that it was or was not, but I wrote this after the 13th.

Q. I see. A. Or that night of the 13th.

Q. All right. Now, you drove, then—did you go up from [76] McMinnville on the morning of the 13th?

A. I don't know whether I did or didn't.

Q. Or is it possible you might have gone back to your home in Vancouver on the night of the 12th and then gone from Vancouver to Hood River?

(Testimony of Chet L. Parker.)

A. Well, referring to my notes, I say I stayed all night at Hood River on August 13th, 1951.

Q. I am talking about the night of the 12th, Mr. Parker.

A. Oh, well, I don't know where I stayed the night of the 12th, August 12th, 1951.

Q. What is your recollection as to the time when you arrived in Hood River?

A. Well, I don't remember exactly when I arrived in Hood River.

Q. Was it early or late?

A. I don't think it was either one.

The Court: What do you regard as early?

Mr. Strayer: I beg your pardon?

The Court: I would like to find out what he regards as early.

Mr. Strayer: Yes.

The Witness: Well, 5:00 o'clock I would think would be early, and late would be 1:00 o'clock in the afternoon or so, somewhat.

Q. (By Mr. Strayer): It is your recollection that you [77] arrived sometime in the morning?

A. Well, yes, as I remember.

Q. About 9:00 or 10:00 o'clock, 11:00 o'clock, somewhere in there?

A. I would not know what time during the morning I arrived.

Q. What was the first thing that you did when you got to Hood River?

A. I don't know what the first thing was nor the last thing I did.

(Testimony of Chet L. Parker.)

Q. Well, did you do anything in Hood River?

A. Well, I suppose I did. I ordered a title report.

Q. You did that before you went up to Lost Lake?

A. I don't know whether I ordered it before or afterwards.

Q. Well, what is your best recollection?

A. That is my best recollection.

Q. It does not seem to you any more like it was in the evening than in the afternoon; is that what you mean to say?

A. I don't know whether I ordered it at noon, at 4:00 o'clock, 1:00 o'clock or 10:00 o'clock, or when I ordered it.

Q. Or before or after you looked at the property? A. That's right.

Q. Did you stop in Hood River before you went to Lost Lake?

A. Well, I presume if I ordered the policy I would have had to have stopped.

Q. Well, but did you order the policy before you went to [78] the lake? You said you did not know, as I understood. Do you remember stopping in Hood River before you went to Lost Lake?

A. Well, I have to go through Hood River to get to Lost Lake, so no doubt I had to stop at the stop sign or stop there, yes, but I don't remember any specific thing I did at 9:30 or 10:00 on August 13th, 1951.

Q. Did you stop and get out of the car?

(Testimony of Chet L. Parker.)

A. Well, if I got out of the car, I would have to stop the car, and I don't know whether I did get out of the car or what I did.

Q. Did you meet anybody in Hood River before you went to Lost Lake?

A. I don't know whether I met them before I went to Lost Lake or after I got back from Lost Lake.

Q. Do you remember talking with anybody before you went to the lake?

A. No, not specifically.

Q. By the way, was Mrs. Parker with you that day? A. I don't remember. I think she was.

Q. Where did you meet Mr. Stegmann?

A. That I don't remember exactly. I think in Hood River, but it might have been on the property or adjacent to the property at Lost Lake.

Q. You say you think you met him in Hood River. What is [79] the reason for that recollection?

A. I might have met him in Hood River.

Q. Do you have any recollection of having met him in Hood River?

A. Well, I might have, and I might not have. I don't—I stayed all night at Hood River on the night of the 13th, I mean—yes, on the 8th month, 13th day, in 1951. My notes place me.

Q. You stayed all night at Hood River on the 13th. Where do you find that?

A. It says, "Dinner and lunch, Hood River, I stayed all night—Hood River—Total—\$12."

(Testimony of Chet L. Parker.)

Q. You think that was, would be the night of the 13th, or would that be the night of the 12th?

A. Well, it is written on the 13th so I presume that I was referring to the 13th.

Q. Do you recall where you stayed?

A. No, I do not. I absolutely do not recall where I stayed.

Q. Where do you usually stay when you stop overnight at Hood River?

A. I don't think that we have any usual place.

Q. Where have you stayed there?

A. Well, I remember one place. I don't know the name of it. It is a motel out to the edge of town. The reason I remember that motel is because my wife complained of them burning the [80] garbage back behind the motel. She didn't like to stay there.

Q. Was that the Lone Pine, by any chance?

A. It might have been. They had one cut-off pine tree in the yard.

Q. All right. Tell us what you did up on that property now, with Mr. Stegmann?

A. Well, I looked at the trees.

Q. Just go ahead; tell us what you did.

A. That is what I did. I looked at the trees.

Q. Is that all you did?

A. Yes, that is what I went for, and that is what I did.

Q. Did you make a cruise?

A. Well, what I call a cruise, yes.

(Testimony of Chet L. Parker.)

Q. Did you look for corners?

A. The two corners we looked at.

Q. Did somebody point out the corners to you?

A. Yes, Mr. Stegmann pointed them out.

Q. Tell us what you did in the way of examining the timber, Mr. Parker.

A. I took a run through it, up through it and down through it, took some notes on it, average diameter of the trees, I separated the species the best I knew. Calculated that there would be about 6,000,000 feet of saw timber or timber come out of those parcels. [81]

Q. How long did you spend doing that?

A. I don't know exactly how long. It is very easy ground to cover; in fact, extremely so. It certainly didn't take me too long.

Q. How many acres did you understand were involved in this tract?

A. Well, it seems like around 55, 56 acres.

Q. Did Mr. Stegmann point out the corners on the entire tract?

A. No, just two corners he pointed out to me.

Q. Did he point out where the lines were, approximately?

A. Well, he told me where the corners were, and I had a pocket compass with me. I naturally knew where I was at.

Q. Did he point out to you approximately where the line was between the two tracts?

A. Pardon me?

Q. Did he point out the approximate location of

(Testimony of Chet L. Parker.)

the line between the two tracts? A. Oh, no.

Q. There were two tracts involved, weren't there, of the 25 and 88 acres and another tract of 40 acres?

A. To me there was only one tract involved.

Q. You considered it only one tract, or Mr. Stegmann did not tell you that there were two separate tracts involved?

A. In purchasing this property then, no. [82]

Q. Yes?

A. No; no, I was purchasing the 57 whatever acres it was.

Q. Well, in making your cruise, then, you made no differentiation as to the location on the property or as to the separate tracts. You cruised the whole area?

A. I cruised the whole area. I separated the amount on Lot 1 from whatever now I guess would be referred to as Lot 2.

Q. Why did you do that?

A. Because that is an individual tract.

Q. Well, then, you did realize that there were two lots involved, two separate tracts involved?

A. No more than I would if I had to cruise a section and I would know there would be 16 quarters in a section of land.

Q. Your point is that you knew that there was more than a quarter-section involved, but you treated it as one tract in your thinking about whether you should purchase it or not?

A. That's right.

Q. You merely followed the customary pro-

(Testimony of Chet L. Parker.)

cedure of making a separate cruise within each legal subdivision; is that what you mean to say?

A. Yes, that was the purpose I had.

Q. Do you still have your notes on your cruise, Mr. Parker?

A. No, I do not.

Q. Do you know where they are?

A. No, I do not. [83]

Q. What is your recollection as to what became of them?

A. Well, I think I tore them up and threw them away. I had a little loose-leaf book, and when it gets full, why I just throw away what I don't want, and I add new pages to what I want to recruiise and re-do or whatever I might do with it.

Q. Did Mr. Stegmann help you make this cruise?

A. No.

Q. Did he stay there while you made it?

A. I don't think so. I think he showed me the corners, and then I left him, and whether he stayed there I don't know. I don't know where he went.

Q. Did he give you the legal description of the property?

A. I think he gave me a legal description on the 12th, on Sunday.

Q. Well, then, presumably, you would have had that with you, would you?

A. Yes; then, of course, the corners more or less gave you legal description. They have a brass cap on them telling where you are at, presuming the Government surveyor knew where he was at.

Q. Did you have a map of the property?

(Testimony of Chet L. Parker.)

A. I had a Metsker map, yes.

Q. With you up there at Lost Lake?

A. No, I don't—I think it was in my car at Lost Lake. [84]

Q. Did you check that map before you went up to look at the property?

A. I am not sure whether I did before or afterwards.

Q. How long did you spend on the property cruising the property?

A. I don't remember how long I spent.

Q. Approximately?

A. I don't remember approximately how long I spent. I spent whatever time it took me to walk up through it and back.

Q. Well, was it more than an hour?

A. Yes, it would be more than an hour.

Q. Was it more than five hours?

A. Well, I wouldn't say. It could be, but I doubt it.

Q. Somewhere between an hour and five hours, then? A. I would presume that, yes.

Q. About what time of day was it that you left the lake that day?

A. Well, that I don't remember.

Q. Did you and Mr. Stegmann talk with anybody else while you were up there?

A. Not that I remember at all.

Q. Did you see anybody else?

A. Now, you are talking about Mr. Stegmann and myself together seeing anyone else? [85]

(Testimony of Chet L. Parker.)

Q. Yes.

A. No; no, Mr. Stegmann and myself together, but I don't remember seeing anyone else.

Q. Well, did you see anybody?

A. Well, pardon me. Yes, I saw picnickers, I believe, yes.

Q. Did you talk to them?

A. I might have said "Hello."

Q. You didn't talk to them about the timber?

A. No.

Q. Well, did you see anybody else besides pic-

Q. You didn't talk with anybody about the timber that day?

A. Not that I remember concerning the timber, the trees.

Q. Do you recall about what time it was that you left the lake, what time of the day?

A. No, I do not.

Q. Now, you had driven there and arrived in Hood River, you say, neither early nor late, sometime in the forenoon, I take it; is that right?

A. Yes, it was sometime in the forenoon.

Q. Then you had driven to Lost Lake and it took you about how long?

A. I would say an hour.

Q. So that that would put you, then, at Lost Lake sometime in the early afternoon? [86]

A. Possibly, or earlier in the morning. If I went up earlier, if I went up earlier, why, I would have got there earlier in the morning.

(Testimony of Chet L. Parker.)

Q. It would still have been along toward noon, would it not?

A. It could have been, or it could have been earlier.

Q. Well, then, if you spent one to five hours examining property, it must have been sometime in the late afternoon by the time you got back to Hood River, was it not?

A. Well, if I was there at noon and spent five hours, then it would be later in the afternoon; but if I only spent two hours, it would be early afternoon.

Q. Where did your wife wait while you went to inspect the property?

A. I don't know; I wasn't with her.

Q. What is that?

A. I wasn't with her. I don't know where she went.

Q. Where did you leave her?

A. I just left her on the street.

Q. Down in Hood River? A. Yes.

Q. Where did you meet her when you came back?

A. As I remember, it was a Richfield Station, but I am not sure about that at all.

Q. Well, is it your recollection that you had an appointment [87] to meet her at the station when you got back?

A. I'm sorry. I met her at the library as I remember, but I am not real sure.

(Testimony of Chet L. Parker.)

Q. At the public library?

A. I believe that was where it was at.

Q. That was by pre-arrangement with Mrs. Parker?

A. As I remember, yes.

Q. Now, you have no recollection of when it was that you went to the title company?

A. No.

Q. It may have been before you went to the lake or after you got back to Hood River?

A. Yes, and it might have been on the 14th.

Q. Did Mrs. Parker go with you when you went there?

A. I don't know whether she did or didn't.

Q. Does it help you any to refer to your diary?

A. No, it doesn't. Well, I haven't got all of the 13th.

Q. What do you mean, you don't have all of the 13th? Isn't this all of the diary on the 13th?

A. Well, it is apparently continued from the page before, but I don't know whether she was with me, went in with me to the title office or whether she did not.

Q. Is there anything prior in there?

Mr. Jaureguy: There is nothing prior to these pages that have anything whatever directly or indirectly to do [88] with this matter.

The Court: I think that unless he has accepted the statement of Mr. Jaureguy that these documents contain all notes which have any relevancy at all to this controversy it may very well be that we will have to order the original document produced.

Mr. Strayer: I will accept Mr. Jaureguy's word

(Testimony of Chet L. Parker.)

a hundred per cent. The only thing that bothers me is that the witness keeps saying something else.

The Court: I will accept Mr. Jaureguy's word, too, but apparently the witness is not agreeable to it.

Mr. Buell: We have two definitions of terms as to what is involved in the controversy.

The Court: Well, with respect to what Mr. Jaureguy said, he agreed that he would put in everything that had any relevancy at all, and I am willing to accept his statement, but his witness is now——

Mr. Jaureguy: The statement I have been making is prior to this time. He has in the diary later on that he came up to see me and such conversations he had before he came up. This covers up to and including October 12th which was the last meeting that they held, so I thought that was enough. At any rate, the only purpose I put it in is because of your Honor's ruling that I could not have him refer to it to refresh his memory; but now I am repeating that prior to this [89] date there was absolutely nothing that has any reference.

The Court: Nobody is concerned about what exists in the diary prior to August 13th. What we are concerned about now and the matter under consideration at this time is whether or not the diary for the 13th is complete as far as any material relevant to this controversy.

Mr. Jaureguy: Yes, it is.

The Court: Very well.

(Testimony of Chet L. Parker.)

(Thereupon there was discussion off the record.)

Q. (By Mr. Strayer): All right. I take it, then, Mr. Parker, on the advice of your counsel you will agree that there is nothing in your diary on the 13th which would serve to remind you of anything further than what you have already testified to?

A. That's right. I agree with him.

Q. Your recollection is that you met Mrs. Parker at the library. You have no recollection whether or not she went with you to order a title policy?

A. I don't know whether she did or she did not. You mean drive over to the——

Q. Well, tell us about your trip to the title company. A. Pardon me?

Q. Tell us about your trip to the title company.

A. Well, I went to the title company to order a report. [90]

Q. What did you say when you ordered the report? A. I told them I wanted a title report.

Q. Was there any discussion of amounts?

A. Yes, as I remember, there was a small amount of, slight discussion as to amounts.

Q. What amounts were mentioned?

A. Well, they pulled out of the file and showed an \$8,000 policy on the property existing at this time, had a map enclosing all of the area or the total amount of area, had a map showing Winans have the ownership of it in their own file, and I told them I wanted a title report on it, and there

(Testimony of Chet L. Parker.)

was discussion that—something about values, and I said well, it would be many, many, many more times \$8,000 if I bought the title policy, but I made it very clear I did not want a policy at that time but strictly a title report.

Q. Was there any mention of the figure of \$50,000 that you recall?

A. Not that I recall, no.

Q. Could there have been?

A. Well, imaginative, yes, but I did not say \$50,000.

Q. All you said was many, many times the \$8,000? A. I did say that.

Q. Had you at that time made up your mind that you were going to buy that timber? [91]

A. Well, apparently not.

Q. Why do you say that?

A. Well, after all, I had not been up there yet.

Q. What is that?

A. If I ordered it in the morning, I had not been up there yet.

Q. You say that you do not know whether you ordered it in the morning or not?

A. That's right.

Q. Why do you say that you had not decided to buy?

A. Well, if I had not seen it, I had not decided to buy it.

Q. If you had seen it, did you decide to buy it when you looked at it?

(Testimony of Chet L. Parker.)

A. Yes, after I had seen it, I had decided to buy it.

Q. And at what price?

A. Well, I figured that I could afford to pay \$125,000 for it, and it would be a good deal.

Q. That was based on your estimate of the 6,000,000 feet of timber of how much per thousand?

A. Well, that figure was all charged back from Portland, Oregon.

Q. I don't know what you mean.

A. Well, I figured a destination of logs at Portland, Oregon.

Q. Explain just what figure you used. You started out with a figure you could sell your logs for in Portland, do you [92] mean?

A. That's right.

Q. Now, what was that figure? How did you work it together?

A. Well, I haven't my notes here, but whatever the log price was at that time less the sawing, dumping, rafting, hauling, yarding, loading, falling and bucking, and of course then we arrive at the stumpage value and how much money I make on the deal.

Q. Do you have some notes that you can use to refresh your recollection? A. No.

Q. How you computed that; what is that?

A. No.

Q. Those notes have been destroyed, also?

A. Yes, but it is quite—the prices are very typical.

(Testimony of Chet L. Parker.)

Q. Yes?

A. The dumping price was \$2.00, as I remember.

Q. I don't care so much for the details if you can give us your best recollection of the stumpage price that you used in forming your ideas of value.

A. I figured I would get \$30.00 for an average for the timber.

Q. \$30.00 average for the timber times 6,000,000 feet, would that give you an estimate of the value of the property, [93] then?

A. That would give my sale price.

Q. Did that include peelers and saw logs and everything?

A. That is based on the average selling price.

Q. Based on the average?

A. As I determined the timber and as to the amounts.

The Court: That was the gross price that you would receive, is that right? Or was that the net?

The Witness: That is your gross, the selling price I would be selling it for to someone else.

The Court: In Portland?

The Witness: Yes. Now, the stumpage value would be based, taking my selling price at Portland, making the stumpage value \$30.00 based on 6,000,000 feet.

Q. (By Mr. Strayer): What percentage of peelers did you estimate were on that property?

A. I don't remember the estimate of peelable material, but I remember one thing, that I figured that the selling price or at the dump would be

(Testimony of Chet L. Parker.)

around average price, selling price would be around between \$70.00 and \$75.00. I remember that figure.

Q. Well, does that help you in determining the number of peelers?

A. No; no, but the amount of peelers helps determine the sale price. [94]

Q. But you are unable to give us any estimate of the number of peelers you thought were on there, as a result of your cruise, of the percentage of peelers I should say?

A. Are you referring to peelable material?

Q. Well, I don't know. I thought that peelers was the standard term that had a well-defined meaning. Am I wrong on that?

A. Well, in my mind we have peelable material, and we have peelers, and the two are isolated from each other more or less but still have a lot to do with each other.

Q. Well, I am certain that I do not understand. Do you mean, then, Mr. Parker, that lots of logs that might not grade out actually as peelers are actually used as peelers by the mill?

A. That is absolutely correct.

Q. Well, now, did you form some estimate of peelable material, then?

A. Yes, I had it figured out as peelable material that would come off the property.

Q. Percentagewise, what was that figure?

A. I don't remember the figure percentagewise. It would have to figure out anyway f.o.b. the dump.

(Testimony of Chet L. Parker.)

It would be somewhere between \$70.00 and \$75.00 log average.

Q. All right. You got back to Hood River, and did you have a discussion with your wife as to whether you ought to buy [95] the timber?

A. Oh, I don't—I think I probably told her it was a good deal maybe. That is purely speculative. I don't know that I told her. I quite often do.

Q. What did you do? A. Pardon me?

Q. What did you do then?

A. I don't remember exactly what I did then during the—when I got back to Hood River and saw my wife?

Q. Yes.

A. I don't remember exactly what I did then, but in the evening I drove to The Dalles to see Mr. Stegmann.

Q. How did you know where to find him in The Dalles?

A. Because he told me he would be there.

Q. Was he living in The Dalles at that time?

A. Yes, I think so.

Q. Did he give you the address where you could find him? A. Yes.

Q. How did it happen that he gave you that address? Had you arranged that up at Lost Lake, that in case you wanted to buy that you would come down there to see him? A. Yes.

Q. I see. And you and your wife drove down to The Dalles, then, on the evening of the 13th; is that correct?

(Testimony of Chet L. Parker.)

A. Yes. If that is the Monday following the Sunday we were [96] having this discussion, that would be on the night of the 13th, August 13th.

Q. Well, your diary confirms that it was the 13th, does it not? A. Yes.

Q. Where did you talk to Mr. Stegmann there, at his home? A. Yes.

Q. All right. I want you to just start right at the beginning and tell us all the conversation that you can remember between you and Mrs. Parker and Mr. Stegmann on that occasion.

A. Well, I remember she was going to make up the deal on a—whatever her paper.

The Court: Who was “she”?

The Witness: My wife was going to type up that agreement, and there was some discussion. It seemed like I brought up the subject of whether he could assign what he had or not. It seemed like there was some discussion on that. There was a discussion on it, but whether it was at that particular time I am not sure. And then there was a little dickering it seemed like. I remember a little dickering on price maybe a little bit.

Mr. Strayer: Pardon the interruption, Mr. Parker. I think that is a conclusion whether there was a little dickering. What I wanted is the conversation, what was said about price. [97]

A. Well, I don't remember. On August 13th, 1951, the evening that I purchased or entered into this deal with some written instruments, I don't remember the words I told or even anything of the

(Testimony of Chet L. Parker.)

deal, the oral things that went on between Mr. Stegmann and myself.

Q. Well, do you remember any discussion about price?

A. Yes, I remember we did some dickering.

Q. What did you say about price?

A. Well, I remember what I said about price. I remember I said I would give him \$125,000. That was in my mind.

Q. What did he say?

A. Well, as I remember, he was not very happy over that price.

Q. What did he want? How much more did he want?

A. I don't remember how much more he wanted. It was more, though. I remember that.

Q. Well, then, you had some haggling over whether he would or would not sell for \$125,000; is that right?

A. Well, there was a dead silence for a while. I remember that.

Q. You cannot remember the price that he was asking nor what the argument was?

A. No; I know my figure was \$125,000. That was the most I could go on it. I wanted to make a profit on it.

Q. Did you have any discussion of the values on the property? [98]

A. Not that I remember, no.

Q. Did you discuss your estimate of how much timber there was on it? A. No.

(Testimony of Chet L. Parker.)

Q. Did he tell you how much he thought was on it?

A. No, I don't believe he did, but he might have.

Q. But you don't believe that he gave you any statement as to the amount of timber that he thought was on the property?

A. As I remember now, I don't know whether he did or he did not, but I don't believe he did.

Q. Did you have any discussion as to the stumpage value of the timber that was on the property?

A. I told him, as I remember, \$125,000 was the most I would ever pay for it, as I remember the first part of the argument or the discussion.

Q. Well, but you were figuring at \$30.00 a thousand, 6,000,000 feet; you were figuring on \$180,000 transaction, were you not, that you could sell it for that much money?

A. That is exactly what I was figuring on.

Q. All right. Now, was there any discussion about the timber being worth an average of \$30.00 a thousand or any other figure?

A. No, there was not.

Q. There was not any other discussion?

A. Well, there was not. I didn't want him to know I could [99] get \$180,000 for it and hoped to buy it for \$125,000.

Q. Your testimony is that Mr. Stegmann never told you that he thought there was 6,000,000 feet of timber there?

A. Not that I can recollect that he said that.

(Testimony of Chet L. Parker.)

Q. You don't remember him saying anything that he thought the timber was worth \$30.00, \$32.00 or \$33.00 or any other figure per thousand?

A. Really, I would not have paid any attention if he would have, but I would not recollect.

Q. That is not the question. Do you remember him saying anything about that?

A. Not that I remember; no, no.

Q. Why was it that in the assignment of option you made that division of \$90,000 and \$35,000 on the two tracts?

A. Tax purposes. I had in mind also a trust. I was going to set up a kind of a trust fund for my son, and I thought I might have an advantage taxwise by separating it.

Q. Will you explain what you mean there? I don't follow you.

A. Well, apparently it would be hard for me to explain because by the time I contacted my attorney I found that then I didn't even know what a trust fund was.

Q. What did you have in mind there, though, on the 13th? You were thinking of what kind of possible trust fund?

A. That's right.

Q. What did you have in mind? [100]

A. Well, I thought he might log the back end of it and leave the front end and then in that way determine its value.

Q. I am sorry. I did not understand you. Will you repeat that?

A. Well, he might log the quarter-section on

(Testimony of Chet L. Parker.)

the—it would be 16 section, and leave the front portion, and then it would be clear-cut 10 or 15 or 20 years from now just what this deal was if I put that into a trust fund.

Q. I want to see if I have that clear. You are talking about 40 acres or 25?

A. Well, it was 12 instead of 14 and 40 acres, I guess.

Q. Where do you get the 12 or 14? There were 25.88 acres, but under the option he was to reserve 8.88 acres, was he not?

A. I think so.

Q. So that would leave something like 17 acres in one tract and 40 acres in the other, would it not?

A. Well, then, they apparently raised the lake or some silly thing. There really was not 20. They raised the lake a couple feet or something, and there was not apparently 25 acres remaining, and it looked to me they had raised it because the meander corner, if that is what you call it, was out in the lake waist-high almost in water, and, therefore, it was indicated to me that there was not 25 acres, and I determined that, excluding that amount, there would be around 14 acres. [101]

Q. You considered that, then, as a 14-acre tract?

A. That is what I had in mind.

Q. Let's see if I have it right. You were thinking that you might log off the 40 acres and then put the title to that in your son?

A. That is what I had in mind, yes.

Q. Would you put title in your son to begin with?

A. Yes.

(Testimony of Chet L. Parker.)

Q. Then log off 40 acres, and in the meantime take title for yourself to 14 acres?

A. I had a trust set out so that there would be a definite value on whatever of what he might leave.

Q. Of what?

A. Definite value of what he might leave. In other words, I just thought to myself this front tract of timber may deteriorate something, and later on it would be worth only five, six, ten dollars, fifteen dollars, something like that, to him. Then he would have it set.

Q. You are now giving the reason why you thought you would take title to yourself as to the 14 acres; is that right?

A. Well, I thought title would go in his name possibly.

Q. To the whole thing?

A. Possibly, yes.

Q. Well, then, what was the particular point in dividing the price as between the two tracts? [102]

A. If in 20 or 30 years from then it burned over or something happened to the piece that he could not log and it might become an argument, I thought to myself what its value was then maybe he didn't pay enough tax then on his inheritance tax or whatever it might be on the trust fund, is what I had in mind. It could very easily pin to the remaining part then what was its value then.

Q. Did you discuss that with Mr. Stegmann that evening?

(Testimony of Chet L. Parker.)

A. No, no. Pardon me, the trust fund, did I discuss it with him?

Q. Yes.

A. No, I didn't discuss the trust fund with Mr. Stegmann.

Q. You did not discuss with him your thought about the necessity of segregating value as between the two lots?

A. I told him that I wished to, that I wanted to separate it.

Q. But you gave him no reason why you wanted to do that?

A. Not that I remember, that I gave him any reason.

Q. Well, now, is it your testimony that if you did give him a reason it must have been this trust fund that you were thinking about for your son?

A. If I gave him a reason, it would have to have been that reason because that was the reason.

Q. That is the only reason you had in mind?

A. That was the potential reason that I had in mind to [103] separate them.

Q. How did you arrive at the two figures of \$90,000 and \$35,000 on the two tracts?

A. From the cruise I had.

Q. In other words, your cruise that you made up there indicated that if there was—that the ratio of value between the two tracts was \$95,000 on the one and \$35,000 on the other?

A. I think it was ninety and thirty-five, but I am not sure.

(Testimony of Chet L. Parker.)

Q. Yes, I am sorry, you are right. It was ninety and thirty-five, a total of one hundred twenty-five.

A. Yes.

Q. You do not have the figures on which that was based anywhere? A. No, I do not.

Q. Would you consider the cruising that you did there that day a careful cruise?

A. Well, I don't represent myself to be a cruiser.

Q. Well, then, answering my question, I presume you would say that you did not consider it a careful cruise?

A. Well, I wouldn't know exactly what a cruiser would do so I wouldn't know, but so far as I was concerned it was careful enough that I was satisfied that it was a good deal.

Q. Wasn't it a little difficult to separate the timber on [104] the 40-acre tract from the timber on the 14-acre tract without first having a survey of the line between the two tracts?

A. Well, I just paced the lines off. I just paced off a certain distance and let it go at that. I went up through a piece and came back down through it, and I didn't feel that one of them trees, one of them would make any material difference whether I put it on Bill Jones' property or where I put it on.

Q. All right, now. But you agreed with Mr. Stegmann that you would take the timber on that evening of August 13th, and under that agreement you were to pay him \$25,000 for his option, were you not? A. Yes, I was paying \$25,000.

Q. What understanding did you have with him

(Testimony of Chet L. Parker.)

as to the payment of the \$4,000 due on the option?
What discussion did you have with him?

A. Well, we had a little discussion. He thought I was beating him out of \$4,000, as I remember. I told him that I wasn't sure that was assignable, he ought to go ahead and pay \$4,000, and then with favors excluded out of the deal that he actually was getting \$20,000.

Q. Was that discussed between you and Mr. Stegmann?

A. As I remember, yes, there was a discussion on that.

Q. And he finally agreed, then, on that, to sell his option [105] for \$20,000?

A. I was to give him twenty-five, but he was to pay the four.

Q. He was also to pay the other thousand dollars back to you, was he not?

A. Oh, yes; it was in the other commitment.

Q. So that, in fact, you agreed with Stegmann that you were only going to pay him \$20,000 for his interest?

A. No, I was paying \$25,000.

Q. Well, I think—you were to pay him twenty-five, but he was standing five thousand of the price?

A. Yes.

Q. All right. Did you give him a check then?

A. I don't know whether I even ever gave him a check. My wife gave it to him.

Mr. Strayer: Will you hand this to the witness?

Mr. Buell: Showing the witness Exhibit No. 40.

Q. (By Mr. Strayer): Exhibit No. 40 you have

(Testimony of Chet L. Parker.)

in your hand, Mr. Parker, is that the check that was given to Mr. Stegmann in payment of \$25,000? Is that a photostat of it?

A. Yes, I think it is.

Q. Who signed that check? A. My wife.

Q. Lois Parker? A. Yes. [106]

Q. When was that check made out and signed?

A. Well, it says August; well, I can't hardly tell. August it says it was; I guess it was.

Q. Can you read the date?

A. No, I can't. It is blurred on the photostat, looks like the 14th.

Q. Your attorney has handed me the original check here. If the Bailiff will hand it to you, maybe you can identify the check better. Can you tell the date better on that?

A. Well, it looks like a "14." It has still been scratched over, but it looks like 14.

Q. It looks like it might have been 13, then was scratched out and 14 put in, does it?

A. Well, or a 15 and then 14 put in.

Q. What is your best recollection as to when that check was made out?

A. I didn't make it out.

Q. Were you there when it was made out?

A. That I don't remember.

Q. Do you remember it being made out?

A. Well, it was supposed to be made out, supposed to be given to him, and I think it was given to him that night, but my wife, of course, would probably know.

(Testimony of Chet L. Parker.)

Q. Well, do you have any recollection on it at all?

A. Well, he was paid, I remember, given a check. I know [107] that.

Q. Well, do you have a recollection of handing him a check that night?

A. No, I didn't hand him a check that night.

Q. Who did?

A. I presume my wife handed him the check.

Q. Do you have any recollection of that?

A. No, I can't absolutely say that I saw her hand him that check.

Q. Well, then, you are not even sure that the check was ever handed to him?

A. Well, my wife no doubt handed him the check, but I did not hand it to him.

Q. No, but I am talking about what you saw and observed yourself. You never saw the check handed Walter Stegmann?

A. No, not that I remember.

Q. Do you remember any discussion with him about when he was to be paid?

A. Well, I would presume he would be paid immediately.

Q. No, I am not asking about a presumption. I am asking what you remember. Do you remember any discussion with him as to when he was to be paid?

A. Well, as I recall, the whole deal was he was going to be paid when he signed the assignment of

(Testimony of Chet L. Parker.)

option. He was paid that night. I am sure he was handed this check that [108] night. Whether it was handed to him or laid it down on a table there, I don't know, or his desk, I don't know. It might have been.

Q. In that case, then, there was a mistake on the date on the check? A. Possibly.

Q. Did you see your wife make the check out?

A. No, I can't say that I saw my wife make the check out.

Q. Well, then, you really have no recollection about the check at all?

A. Well, yes, I have a recollection of it, but I don't—I can't just positively say that my wife on August 13, 1951, handed the check to Walter Stegmann.

Q. But your best recollection is that he was paid that night?

A. Yes, I think he was; sure he was.

Q. While you were there in his apartment at The Dalles?

A. Yes, I think he was paid there that night.

Q. Isn't it a little strange that you do not remember the check being made out or handed over, Mr. Parker?

A. Well, it doesn't seem strange to me that I saw my wife hand him the check. I am sure he was paid when the assignment was made. It called for this payment, and the check is here, and he would have had to have gotten the check.

Q. All right. Who made out the assignment of

(Testimony of Chet L. Parker.)

option? [109] A. My wife did, I believe.

Q. Did she prepare that herself, or did somebody dictate it to her?

A. I believe she prepared it herself.

Q. Was that on her typewriter or Stegmann's typewriter?

A. I believe it was hers. She had hers, and I believe it was her typewriter.

Q. Is that a portable you carry around in the car?

A. Yes, sir; a portable, but it may not be the portable we have now, but it was a portable, as I remember.

Q. Well, do you recall seeing her making out that assignment?

A. Yes, I remember her typing the assignment. The reason I remember, she made a mistake or two, she thought, and she tore up two or three of them and then finally came up with this thing.

Q. That was right then in Stegmann's apartment? A. Yes.

Q. On the evening of the 13th of August?

A. Yes.

Q. All right. When you left, you had an understanding with Mr. Stegmann that he was to pay \$4,000, as I understand it? A. That's right.

Q. Was there any understanding between you and Mr. Stegmann as to when that was to be paid?

A. Yes, something was mentioned, seven days thereafter, or [110] something.

(Testimony of Chet L. Parker.)

Q. Well, the option had to be exercised on or before August 18, as I recall; is that right?

A. That is as I remember it.

Q. And your understanding with Stegmann was that he was to pay the \$4,000 before August 18th, is that correct?

A. Yes, or August 18th.

Q. Or on August 18th?

A. Yes.

Q. Did you have any other understanding that you were going to meet with Mr. Stegmann during that intervening period?

A. Well, there was a discussion about a survey.

Q. That is the survey of the reserved area, you mean?

A. Yes, I think there was discussions sometime in between those times about a survey, as I remember.

Q. Well, I had overlooked that. Did you have any discussion with him on August 13th about him surveying the reserved area?

A. I believe we did, but I am not sure. I think we did, that he would do the surveying up there of that reserved area.

Q. Did you have any arrangement for meeting with him at the time that he made that \$4,000 payment; I mean, on August 13th, when you left, did you tell him, "I will go back to town, and we will go up then to see Winans together and pay [111] him the \$4,000"?

A. I believe we made a—I believe he was told I would be there in the evening of the 18th.

Q. Well, now, do you recall any contact with

(Testimony of Chet L. Parker.)

Stegmann between August 13th and August 18th when you went up there to exercise the option?

A. I don't recall any. Well, I do now.

Q. All right. Did you refresh your memory from the diary? Tell me about it.

A. Well, on the 17th, apparently, I saw Mr. Stegmann.

Q. Where was that? The diary indicates at Vancouver, does it not?

A. Well, it indicates Vancouver, Washington.

Q. Do you have any recollection of that?

A. No, not especially.

Q. You will note your diary says, "Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would." Is that your recollection? Does that bring anything back to your recollection?

A. Well, as I remember, we were supposed to meet the night of the 18th at Winans', or I was supposed to be up there.

Q. Does that bring anything back to you about what your agreement was on the 17th on about what you talked with him on the 17th? [112]

A. No.

Q. Well, can't you remember?

A. Oh, something about surveying. It seemed like he had been up there checking it or something.

Q. I don't want to backtrack with you. When you left with him on August 13th—I would like to follow this as nearly chronologically as we can—you had taken the assignment of option. Now, what

(Testimony of Chet L. Parker.)

did you do next with respect to the Winans' property?

A. After I had the assignment of option?

Q. Yes.

A. Well, as I remember, that evening I got in touch with Mr. Smith, and, as I remember, he called me back and said that they——

Q. Who is Mr. Smith?

A. He was the timberman for Multnomah Plywood.

Q. You think you called him on the night of the 14th or 13th? A. No, the 13th.

Q. Night of the 13th after you left Mr. Stegmann's place?

A. Yes. Now, I am not sure whether before or afterwards, but I am sure it was afterwards.

Q. After the 13th?

A. No, after I left Stegmann.

Q. Would that have been a call that you made at The Dalles? [113]

A. Well, yes, I suppose I would, or at Hood River, somewhere up there.

Q. Did you stay all night at The Dalles, would your diary indicate?

A. I don't know whether I did or not.

Q. Your diary does not say, I guess, where you stayed that night, did it?

A. 14th, I drove to Vancouver, Washington.

Q. That would indicate that you stayed down either at The Dalles or Hood River, I presume, is that right?

(Testimony of Chet L. Parker.)

A. I suppose, yes, one or the other two places.

Q. Well, is it your recollection that you called Mr. Smith?

A. Yes, as I recollect.

Q. Either over at The Dalles or Hood River?

A. Yes.

Q. What was the conversation?

A. Well, I told him I had some good timber to sell him.

Q. Did you tell him about the Winans' tract?

A. I don't think I referred to it as the Winans' tract, but I told him about the timber near Lost Lake and that—that's about all I did.

Q. What did he say?

A. That's about all. He said he would be interested in it. I told him I was in a big hurry to get it cruised and so forth. [114]

Q. There was no definite arrangement made at that time about any further talks?

A. Pardon me?

Q. There was no definite arrangement made at that time about any further talks?

A. Yes, he said he would contact Mr. Kenney, the cruiser, and then he would call me back, as I remember.

Q. Did he call you back?

A. Yes, and in the meantime, as I remember, I contacted Mr. Stegmann to have him show him the corners.

Q. When did he call back, that same night, do you mean?

(Testimony of Chet L. Parker.)

A. Yes, as I remember, he called back that same night.

Q. Then Mr. Smith never called you back. He told you Mr. Kenney would be out to cruise the property?

A. Yes.

Q. On behalf of Multnomah Plywood?

A. Yes.

Q. Do you recall telling Stegmann that that was going to be done?

A. I remember discussing it with Mr. Stegmann because I wanted him to show Mr. Kenney—

Q. When did you tell Mr. Stegmann that?

A. Well, I think it was that same evening.

Q. While you were over there getting the option signed?

A. Well, either—I might have called him or went back— [115] no, it was not while I was getting the option signed. It was after that.

Q. Well, then, you either went back over to his house, or else you called him and told him Kenney was coming out?

A. That's right.

Q. Did you tell when Kenney was coming?

A. Yes, I think I told him the next morning.

Q. Is that your recollection when Smith said Kenney would be out?

A. Yes.

The Court: We will take a recess.

(Recess.)

Q. (By Mr. Strayer): Mr. Parker, I believe we were talking about the arrangements for Mr. Kenney to make a cruise and about your having

(Testimony of Chet L. Parker.)

told Stegmann on the night of August 13th that Mr. Kenney would be out. I notice in your diary under the heading of August 14th the statement that, "Mr. Kenney is going up tomorrow." Does that refresh your recollection as to what arrangements might have been made regarding Mr. Kenney?

A. Well, I thought it was the 14th, but it could have been the 15th. The diary was written each time or generally during the evening or the next day or two, and it would have a better memory than I would. I would hate to argue with it, [116] but I believe it was the 14th he was supposed to be there.

Q. Well, now, I notice, also, that your diary for the 14th states that you met today with Multnomah Plywood, "I seen Multnomah Plywood today about selling them the Lost Lake property. Mr. Kenney is going tomorrow to look at it."

Now, is it possible that it was not until your meeting on the 14th with Multnomah Plywood that you talked with Mr. Smith?

A. Well, it is possible, but I don't believe that is the way it is. I believe this was probably another meeting. I might have came in to see him on the 14th.

Q. Your best recollection still is that you called Mr. Smith the night of August 13th?

A. I am sure that is what happened.

Q. And your best recollection is that Kenney was to go up on the 14th rather than the 15th?

(Testimony of Chet L. Parker.)

A. Yes.

Q. As a matter of fact, the Kenney cruise is dated the 14th, is it not?

A. Yes, I guess so. I never—I never noticed.

Q. I think that is correct, and I won't hold you to that. We will see what the cruise says for that. All right. Now, what happened at this meeting with the Multnomah Plywood on the 14th? Will you tell us about that?

A. I don't remember much about it. It seemed like I outlined— [117] I don't know whether it was on the 14th or a later time I saw them—that I outlined a sales proposition to them.

Q. That was on the 20th, was it not? I think your diary indicates.

A. But I think I might have been to Mr. Smith previous to that, but I am not sure again.

Q. You have no clear recollection in your mind of what was done at the meeting on the 14th?

A. No.

Q. Do you recall there was a meeting on the 14th?

A. I don't know, no. I don't recall that there was a meeting on the 14th other than reading my diary, and it says there was.

Q. Now, what did you do on the 15th?

A. I believe I went up to Hood River the 15th. Now, the only reason that I can say that at all is that I noticed I made a note of Mr. Dufur had came to see my wife, and it seems like that day I remember it that I was up at Dufur, and my wife

(Testimony of Chet L. Parker.)

said that Mr. Dufur was there. Dufur was named after this man's grandfather or somebody, and that day I was at Dufur, and that is the only recollection I have that I could have been at Hood River or up at Dufur, is that.

Q. When was your next contact with the title company, Mr. Parker? [118]

A. I really don't remember.

Q. Well, what arrangement had you made with the title company about getting this report which you had asked for?

A. Well, it seems like I was getting my car greased at Hood River, and my son went over—I told him to go over to the Hood River office of the Title and Trust office and have them send a report or I would pick up a report at Portland, as I remember.

Q. On what date was that?

A. Well, I don't know what date it was.

Q. Could that have been on the same date that you ordered the report, the 13th?

A. No, it was not the same date.

Q. Your son was not with you on that date?

A. I don't know whether he was or was not.

Q. Can you give us any idea of what date that might have been?

A. Well, it was after that time.

Q. How long afterward? A. I don't know.

Q. You think that it might have been on the 15th?

(Testimony of Chet L. Parker.)

A. Well, I think that it could have been on the 15th.

Q. Does your diary indicate that Myron was with you on the 15th?

A. No, but he went with me quite continuously during vacation [119] time.

Q. Your diary indicates that on the 16th you "Drove to Gold Beach and looked at some timber up on the Illinois River. Stayed all night in hills, packed four miles, damn good and tired."

A. I remember that.

Q. You remember that trip. Do you remember what time you got back from Gold Beach?

A. No, I certainly do not.

Q. Was that the date that you picked up the title report at the Portland office?

A. On the 16th?

Q. Yes.

A. I don't know whether it was or it wasn't.

Q. Is there anything in your diary indicating when you got to Portland? A. I don't know.

Q. What is your best recollection as to when you got the title report here in Portland?

A. You mean as to the date?

Q. Yes. A. I couldn't remember the date.

Q. Well, will you glance through your diary and see if you can pick up anything in there indicating when it was?

(Witness consults diary.) [120]

(Testimony of Chet L. Parker.)

Q. Maybe we could get at it this way: I think that the——

The Court: How about the receipt for \$25.00 from Title and Trust?

Mr. Jauregui: Yes, the check is what we are looking for. Let us see 104.

The Witness: I show on August 30th that I drove to Hood River to get title insurance.

Mr. Strayer: Will you hand the witness Defendants' Exhibit 104?

(Document presented to witness.)

Q. Is that exhibit, Mr. Parker, the check that you gave to the title company at the time that you picked up the report? A. Yes.

Q. That is dated August 16, is it not?

A. Yes.

Q. Well, that would indicate, then, would it not, that you went in and picked up a title report on the 16th of August at Portland? A. Yes.

Q. And it is your recollection that that was by arrangement that your son had made with the title company?

A. Well, that is a very dim recollection.

Q. Well, now, what is your recollection? That was the day that you got back from Gold Beach. Is it your recollection that you picked that up when you came back from Gold Beach [121] that afternoon?

A. Well, I don't know whether it was in the morning or afternoon.

(Testimony of Chet L. Parker.)

Q. You could have picked it up on the way down? A. That's right.

Q. You don't know which, but, at any rate, you got a title report, did you, on August 16th?

A. Yes.

Q. Now, on the 17th what did you do? Refresh your memory from your diary or whatever you desire. Incidentally, I think we are both mistaken. According to your diary, Mr. Parker, I note that your diary under date of August 17th says, "Drove home from Gold Beach." So, apparently, you stayed all night in the hills the night of the 16th down at Gold Beach, is that correct? A. Yes.

Q. That would mean that you must necessarily have picked up a title report before you went to Gold Beach? A. That's right.

Q. All right. Then you came back, apparently, from Gold Beach on the 17th and stayed all night at your place in Vancouver, is that right?

A. That is what the diary says.

Q. Well, do you have a different recollection?

A. No, not that. I certainly cannot remember what I did on [122] the 17th. I am not attempting to.

Q. Is it your testimony that this diary is correct? A. Yes, it is correct.

Q. You made these entries on the dates that are on the sheets?

A. Or within a short time thereafter.

Q. Within a day or two afterward?

A. That is right.

(Testimony of Chet L. Parker.)

Q. And while the matter was fresh in your memory? A. Yes.

Q. Now, I note there on August 17th, "Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would."

I think I asked you about that already. You have no clear recollection of having that conversation with Mr. Stegmann?

A. No. I remember there that there was a conversation there.

Q. Was that a personal telephone conversation, or how? A. I don't remember which it was.

Q. Well, what was your arrangement, as you recall it, with Mr. Stegmann regarding closing?

A. Regarding what?

Q. Regarding closing of the transaction with Mr. Winans.

A. Are we referring to the night of the 18th as being the [123] closing with Mr. Winans, or what?

A. Well, that is what I had reference to, yes, the election to purchase. You had some arrangement apparently with Mr. Stegmann on the 17th about going together to see Mr. Winans? A. Yes.

Q. To pay the \$4,000? A. Yes.

Q. Now, what is your recollection as to what that arrangement was?

A. Going to pay Mr. Winans the \$4,000. He was to give him a \$4,000 check, and that I was to come up there that evening, as I remember.

Q. Were you to meet at any place up there?

(Testimony of Chet L. Parker.)

A. Yes, at Winans'.

Q. You were to meet at Winans'?

A. Well, not especially at his house. We were supposed to meet at his office.

Q. Well, does he have an office there in the service station? Is that where you were to meet?

A. Well, that is where we was supposed to meet, yes.

Q. What time of the day?

A. I don't remember. It seemed like it was in the evening.

Q. You did have a definite appointment, as you recall it? A. Yes.

Q. Did you have any arrangement about notifying Mr. Winans [124] of this intended meeting on the 18th?

A. Well, it seems to me that Mr. Stegmann was going to do some surveying in a day or two—or the day of the 18th, and that he would tell Mr. Winans, as I remember it.

Q. Stegmann was to tell Mr. Winans that you would meet on the 18th, the evening of the 18th?

A. Well, now, I am not positive about it, but I think that is the way it was.

Q. Well, do you recall something of that kind?

A. Well, it certainly is not very fresh in my memory.

Q. Well, did you go there and meet with Mr. Stegmann and Mr. Winans?

A. Well, I didn't go—I went purposely to meet

(Testimony of Chet L. Parker.)

and see that that deal, the election to purchase, was already completed.

Q. You did see Mr. Winans that night?

A. Yes.

Q. Mr. Paul Winans? A. Yes.

Q. At his office in Hood River?

A. No, not at Hood River.

Q. Oh, Dee, is it?

A. Well, he has got an office there.

Q. What is that?

A. He has got an office, and he is not either at Dee or [125] Hood River.

Q. Just where is it?

A. Well, it is in between both places.

Q. At any rate, that is where you met?

A. Yes.

Q. Was that the first time that you had ever met Mr. Winans? A. To my recollection, yes.

Q. Were you introduced to him at that time?

A. Yes.

Q. Who introduced you?

A. I believe, well, either myself—I believe I introduced myself.

Q. Who was present there when you came in?

A. In the office itself?

Q. Yes.

A. Well, it seemed that Walt was there, Walt Stegmann, and another person and Paul Winans.

Q. Who was the other person?

A. I don't know.

Q. Were you introduced to him?

(Testimony of Chet L. Parker.)

A. I don't believe so.

Q. It was a man, I take it?

A. Yes, I think a man, maybe a woman.

Q. Were you by yourself that day?

A. I think I was, yes, but I am not sure. [126]

Q. Is there anything in your diary to indicate that anyone was with you? A. No.

Q. That, then, is your first meeting, to your knowledge, with Mr. Paul Winans? A. Yes.

Q. Had you ever talked with him before?

A. In person?

Q. Either in person or by telephone.

A. I don't think I did, but I might have.

Q. Well, do you have any recollection of a telephone call before that time?

A. Well, I have a recollection of a telephone call, and I do not know that it was a day or two before the 18th or a day or two afterwards, or what time it was.

Q. Is there anything in your diary about any telephone call either on the 17th or 18th?

A. I do not seem to find anything.

Q. Had you had any contact with Mr. Winans prior to that time in any way?

A. If it was not with a phone call, why, then I didn't have any contact that I remember.

Q. Well, I assume from the letter that you wrote on August 15th—maybe we had better get the letter. What is that exhibit? [127]

Mr. Buell: 321.

Mr. Strayer: May I have that letter?

(Testimony of Chet L. Parker.)

(Discussion between counsel off the record.)

Q. (By Mr. Strayer): The Bailiff will hand you, Mr. Parker, Exhibits 320 and 321. What are the dates of those letters, Mr. Parker?

A. One is dated on August 11, 1951, and one is dated August 15th, 1951.

Q. The letter of August 11th is a letter, is it not, to you from the bank at Hood River inquiring as to the financial responsibility of Mr. Stegmann?

A. Pardon me?

Q. Would you read the question?

(Question read by the Reporter.)

The Witness: It is addressed to either Mr. and Mrs. Parker, yes.

Q. And Exhibit 321, dated August 15, 1951, did you write that letter? A. No.

Q. Who did write it?

A. Well, since my wife signed it, I would presume she wrote it.

Q. It is signed Chet L. Parker, is it not?

A. Yes.

Q. Is that your wife's handwriting? [128]

A. Yes.

Q. You mean your wife signed your name to the letter? A. It appears that way.

Q. Well, you know your wife's signature, do you not? A. Well, it is not mine.

Q. You know your wife's handwriting?

A. I think it is hers.

Q. Does it look like hers? A. Yes.

(Testimony of Chet L. Parker.)

Q. Have you discussed that letter with Mrs. Parker?

A. No, not to any great length of any kind.

Q. Have you talked to her about it at all?

A. Pardon me?

Q. Have you talked to her about it at all?

A. You mean just very recently?

Q. Yes, very recently.

A. Well, yes; it seems to me like that, in Mr. Jaureguy's, after the things were submitted that there was a discussion about that.

Q. Well, you knew then that your wife wrote and signed a letter, did you not?

A. I didn't know it until I just looked at it right now.

Q. This is the first time you have known it?

A. That I knew who wrote it.

Q. Well, now, at the time that that letter was written or [129] at the time of the receipt of the letter of August 11, 1951, did you discuss with your wife that that was the reply that should be made?

A. Yes, I remember that Mr. Stegmann indicated to me that he was going to do a housing project with Mr. Winans, something to do with irrigation possibilities and some housing, and he was going to trade some stuff off or have something to do with trading equities or trucks or something, oh, work up a deal with him. I remember having that discussion with Mr. Stegmann, and he asked me if I would be interested, and I indicated I very possibly would, and I remember telling my wife that.

(Testimony of Chet L. Parker.)

Q. When was this conversation with Mr. Stegmann?

A. I don't remember. I believe it was while we was up at Lost Lake.

Q. On August 13th? A. 13th, yes.

Q. You indicated that you might be interested in Mr. Winans' housing project?

A. Yes, I would be interested in anything. I told him I would be interested in anything to make a buck.

Q. It is your recollection that you told Mrs. Parker? A. Yes, I mentioned it to her.

Q. Before this letter of August 15th was written?

A. Yes, I think I mentioned it to her before August 15th. [130]

Q. Did you tell her what to write in this letter?

A. No.

Q. She did that on her own?

A. Yes, absolutely.

Q. Did she discuss with you what she was going to say about Mr. Stegmann in this letter?

A. No, no; it seemed like I did tell her to write him a recommendation or something.

Q. A recommendation of Mr. Stegmann?

A. I believe I did, maybe some discussion about recommendation.

Q. When you told Mrs. Parker that, had you seen the letter from the bank about——

A. Pardon me?

(Testimony of Chet L. Parker.)

Q. When you told Mrs. Parker that, had you seen the letter of August 11th from the bank?

A. This is the first time I have ever seen that letter.

Q. Did Mrs. Parker tell you there was such a letter?

A. It seemed like she mentioned it casually to me, but I am not sure she did.

Q. Did she tell you that the bank was inquiring whether Mr. Stegmann could finance an \$80,000 deal?

A. Because of a housing deal, I remember something being mentioned about a letter, and she—either one of these letters I have never seen [131] before.

Q. Well, did Mrs. Parker tell you that the bank wanted to know about his responsibility on an \$80,000 deal?

A. Well, I don't think it was a specific \$80,000 deal. I don't think she ever told me that. I think she did tell me there was an inquiry as to the recommendation or something for Mr. Stegmann.

Q. She didn't tell you how big a deal it was or anything about it?

A. I don't think she did, as I remember now.

Q. You told her to write a letter of recommendation?

A. I don't think that I told her to write a letter of recommendation. I think she wrote this on her own.

Q. I beg your pardon. I thought you said a

(Testimony of Chet L. Parker.)

minute ago that you thought you had told her to write a letter of recommendation?

A. I told her it would be all right to write a letter of recommendation. I think she mentioned it to me casually. It would be all right, but I didn't actually tell her to write a letter.

Q. Did you tell her it would be all right to write a letter and sign your name to it?

A. I didn't tell her it would be all right to sign my name.

Q. Did you find out when you came home that night that she had written a letter?

A. No, I don't—this is the first time that I [132] have actually read either one of these letters.

Q. Do you disapprove of the letter, Mr. Parker?

A. No.

Q. Do you agree with everything that is said in the letter of August 15th?

A. Well, not exactly.

Q. In what respects do you not agree?

A. Well, actually, the phraseology of the thing, I guess you would call it; however, mine would probably be worse than hers.

Q. Well, what do you object to?

A. Well, she has indicated in here he has the necessary funds. I think that should be that he could get or acquire available necessary funds, would be the only thing that I would—and then another thing, I don't know what she meant by "many years," whether that is four or five or a hundred

(Testimony of Chet L. Parker.)

or fifty. That is about the only things that I would disagree to.

Q. That is about the only changes you would make?

A. Well, as of right now I would not even write a letter, but then at that time, why, I suppose that is what the changes——

Q. Now, you say that you would not have said that Mr. Stegmann had the funds or necessary funds. You would have said that he could get [133] them?

A. That I would not have said that I felt sure Mr. Stegmann has the necessary funds, but that it might be available to him, something of that matter.

Q. As a matter of fact, it might have been available to him through you?

A. Yes, it is very possible.

The Court: Is it your testimony that this letter that your wife wrote has no relation to the Lost Lake property?

The Witness: It has to do with the housing project and a pipe line, irrigation deal.

The Court: It does not relate to the purchase of the timber that you ultimately bought?

The Witness: Not as far as I am concerned.

The Court: One other question: Was this a purchase of \$125,000 of timber, a routine transaction as far as you were concerned in August of 1951?

The Witness: Yes.

The Court: You had been purchasing timber in that amount or greater with frequency?

(Testimony of Chet L. Parker.)

The Witness: Well, about once a year.

The Court: Once a year?

The Witness: Yes.

The Court: But you didn't—this was merely routine for you, these various transactions; that is the reason you don't recall? [134]

The Witness: That is right.

Q. (By Mr. Strayer): Mr. Parker, you say once a year. Are you referring to the size of the transaction?

A. Yes, the total amount of business or the total amount of expenditure would be around \$100,000 to \$125,000 on the purchasing of timber, stumpage, and so forth.

Q. Of course, you had a great many smaller deals than this?

A. Well, I mean, all of them combined each year then would make this amount, when I say this amount, \$100,000 to \$125,000 worth.

Q. Did you have a good deal of experience in getting title, experience in connection with these other deals?

A. Well, I have always—I just purchased and gave them a check for it, paid them for it, and they handed me the policy. That is about the extent of it.

Q. No similar deals, that is, where you were buying an option, asking an assignment of option?

A. On taking an assignment of an option was new to me in that respect.

Q. Well, your business has been, say, in a large

(Testimony of Chet L. Parker.)

degree has been in buying and selling timber, has it not?

A. Well, no, no selling—buying and selling some of my timber, but it has also been in logging timber.

Q. Yes, but isn't it a fact that a very large part of your income during the last several years has been from buying [135] tracts of timber and selling timber?

A. I think most of my income probably was from logging, of actual performance of merchandising, bidding on the market. I have not got the figure right at my hand, but I know it was quite considerable, and I made several loans, and I had quite a lot of income from that, too, for many years.

Q. How many transactions have you had, would you say, when you bought timber for the purpose of reselling and making a profit?

A. Probably, strictly a guess, I suppose five or six.

Q. You mean in all of your operations you had only had five or six cases where you bought timber and resold it?

A. For the purpose of, you said, reselling, and that is for the purpose of reselling.

Q. Let us take that out, then. Cases where you bought timber and sold it for profit.

A. Well, in that event, oh, I don't know. It is purely a guess, and that is kind of a hard question to answer.

Q. Well, I won't hold you to any very close limit. Can you give us an approximation?

(Testimony of Chet L. Parker.)

A. Of close limits?

Q. Just give us an approximation. I won't hold you to any close limit.

A. Maybe 50.

Q. In those 50 transactions did you have title insurance [136] in all of them or most of them?

A. Oh, maybe half and half. I don't know.

Q. Did you have any evidence of title on the other half?

A. Abstract. I either had one or the other, an abstract or title insurance.

Q. You always had one or the other?

A. Yes.

Q. Well, now, going back to your meeting on August 18th, the evening of August 18th, at Paul Winans' home, will you just take us right through that meeting and tell us everything that happened then? By the way, I believe I will offer in evidence at this time Exhibits 320 and 321, the two letters I am talking about.

Mr. Ryan: We have no objection, your Honor.

The Court: They may be admitted.

(Documents, letters previously marked Pre-trial Exhibits 320 and 321, were thereupon received in evidence as Plaintiff's Exhibits 320 and 321.)

The Witness: I was there not very long, for a long length of time. It would be purely a guess, but it would seem like maybe an hour or less. I really don't remember vividly anything other than what

(Testimony of Chet L. Parker.)

kind of a deal I was going to get for this property. I was interested in it because from the instruments I had or the papers I had from Mr. [137] Stegmann it did not indicate that I would get either a title insurance policy or an abstract, and I was very interested in which one I would get because I certainly would have to have one or the other, and I preferred, of course, a title policy. Mr. Winans told me and pointed out to me that his instruments did not call for him paying for a title policy, and if I wanted one I would have to pay for it myself, and that is about the extent—oh, there was something about surveying, Mr. Stegmann would be doing the surveying, and from there on he would be dealing with me.

Q. What?

A. That Mr. Stegmann would be doing the surveying of the property from then on, and he would be dealing with me from then on to finish paying for it, and that is about—oh, there was some—then I left alone, if I was alone, and I am sure I was. At least, I left his office alone. No one else went in with me to his office.

Q. Your recollection is that you were there about an hour?

A. Well, it wasn't over that long if shorter.

Q. When you arrived Mr. Stegmann was already there?

A. Yes, I am sure he was.

Q. When you left was Mr. Stegmann there?

A. That I am not sure about.

(Testimony of Chet L. Parker.)

Q. What is your best recollection as to whether you left first or Stegmann left first? [138]

A. I would not, absolutely would not know which one left first.

Q. You haven't anything that you can refer to to refresh your memory on that?

A. No, that——

The Court: I did not fully understand that testimony with reference to the title insurance or abstract. Would you mind reading that testimony?

(Testimony referred to was read by the Reporter.)

Q. (By Mr. Strayer): Mr. Parker, on the subject of who left first I have here a copy of your deposition which was taken on August 7, 1952. Do you recall the occasion of your deposition?

The Court: Do we have copies of those depositions?

Mr. Strayer: Yes.

The Court: Under the practice here the witness is entitled to see the deposition.

Mr. Buell: That is Exhibit 22.

Q. (By Mr. Strayer): Were you not asked this question, Mr. Parker, and did you not give this answer on your deposition:

“Q. Stegmann left ahead of you that evening?

“A. I think he left ahead, but I am not sure.”

Mr. Strayer: Would you hand this to the witness? [139]

Mr. Jaureguy: What page is that on?

Mr. Strayer: Page 230.

(Testimony of Chet L. Parker.)

The Court: Is that the whole question and answer?

Mr. Strayer: Yes.

The Court: You have not impeached him by that statement.

Mr. Strayer: I am trying to refresh his memory, your Honor. I am not trying to impeach him.

The Witness: Well, it is not as fresh now as it was when this deposition was taken. This has been some time ago, too. It is more hazy than ever in going over the recurrence of the event. Normally, when I purchase a piece of timber I don't make a note that I left before Bill Jones or John Doe, or my own memory or otherwise, and I don't remember whether he left first or afterwards, but I believe I left first. I am still thinking maybe I might have left first.

Q. (By Mr. Strayer): You think now that you may have left first. I beg your pardon. You thought when this deposition was taken that you left first?

A. Yes—

Q. No, no; the other way around; you thought when the deposition was taken that he left before you did, and you are now—your best recollection is that you left first?

A. Well, we didn't leave together.

Q. I know, but that is not the question.

A. Well, I am sorry; I can't say whether we left first, last. [140] or when he left.

Q. All right. Now, what conversation took place

(Testimony of Chet L. Parker.)

regarding this notice of election to purchase, Mr. Parker?

Mr. Jaureguy: I wonder if I could interrupt here on a matter that should have been done before? At one of the depositions they asked the Parkers to bring in a copy of that Bargain and Sale Deed which they said they thought they had and also notice of election to purchase, and Mr. Parker gave them to me some time ago, and I put them in that envelope, and for some reason I did not have the pre-trial numbers put on them, and I would like to submit them to Counsel right now, if I might. Might I do it with that explanation?

The Court: Yes.

Mr. Jaureguy: They are in the envelope he gave me. (Presenting envelope.)

The Court: Let us mark them first. Are they marked? Did you reserve a pre-trial number for them?

Mr. Buell: No. 26 is open.

Mr. Jaureguy: And 27.

Mr. Buell: And 27.

(Document, Notice of Election to Purchase, August 18, 1951, was thereupon marked Plaintiff's Exhibit 26 for Identification.)

(Document, Bargain and Sale Deed, was thereupon [141] marked Plaintiff's Exhibit No. 27 for Identification.)

Q. (By Mr. Strayer): You have before you Exhibit 26, which I understand from your counsel

(Testimony of Chet L. Parker.)

is a copy of Notice of Election to Purchase which you delivered to him at his request; is that right, Mr. Parker? You delivered it to Mr. Jaureguy at his request? A. Yes, I think so.

Q. Yes, and what is that document?

A. Well, it says election, Notice of Election to Purchase.

Q. Is that the copy that you took away from the meeting on August 18th? A. Yes.

Q. All right. Now, tell us about the conversation regarding the signing of that notice?

A. Well, I was not there when it was signed.

Q. It had already been signed when you arrived, you mean?

A. I am pretty sure it was signed when I arrived. I am not real sure about it, but I think it was.

Q. You think it had already been signed when you arrived? A. I think it was.

Q. Now, I notice on your copy that the signature of Walter Stegmann does not appear on the top line, is that correct? A. Yes.

Q. That line is blank? [142] A. Yes.

Q. Was there a discussion at this meeting as to whether or not that should be signed?

A. Yes, there was some discussion.

Q. What was the discussion?

A. Well, Mr. Paul Winans wanted him to sign it, and Walt, I think Mr. Stegmann says he didn't see why he should sign it, and I said I certainly could see no reason for him to sign it.

(Testimony of Chet L. Parker.)

Q. What led up to this discussion about whether he should sign or whether he should not?

A. I don't know. They had the discussion before I was there.

Q. Were they arguing about it when you got there? A. Well, not violently.

Q. Were they still arguing about it at that time?

A. They was talking about it. It was in the conversations.

Q. And the conversation you heard was that Winans wanted Stegmann to sign it, and Stegmann was refusing to sign it? A. That's right.

Q. On that ground?

A. Well, he said he didn't see why he should sign it, didn't have anything more to do with it. It was up to me now. If anybody should sign it, I should sign it.

Q. In other words, he told Winans in your presence that [143] you had bought his interests, and that if anyone signed it you should be the one to sign it? A. That's right.

Q. Did Winans ask you to sign it?

A. Well, it was mentioned. I didn't give him too much time to ask me. I told him I wouldn't.

Q. For what reason did you refuse to sign it?

A. I saw no reason to sign anything. This was the first one ever been submitted to me. I was going to pay the cash, the money. I saw no reason to go around signing things all the time.

Q. Didn't you regard it as important to give a notice of your election to buy the property?

(Testimony of Chet L. Parker.)

A. No, I was telling him about it. He was posted notice right there.

Q. Did Mr. Winans call your attention to the clause in the option that referred to a written notice of election to purchase? A. Yes.

Q. Notwithstanding that, you felt that you didn't need to sign it?

A. I felt I was not obligated to sign it, and I felt that I didn't want to sign it. I had no legal advice, and I just felt that it was a new one on me, notice of election to purchase, acknowledgment of notice, and all these things, that [144] was a new one on me.

The Court: Who had prepared this document, Mr. Winans?

The Witness: Well, that was my understanding, that he had prepared it.

The Court: May I take a look at the document?

Q. (By Mr. Strayer): Mr. Bailiff, will you hand the witness Exhibit 307? That exhibit also is a copy of the same document, is it not, Notice of Election to Purchase?

A. It looks similar.

Q. Unlike the one that you have, that has the signature of Walter Stegmann on the top line, does it not? A. That is what the name says.

Q. Do you know Mr. Stegmann's signature?

A. Well, not well enough to say that he signed the upper line or the bottom one either.

Q. Is there any controversy on that, Mr. Ryan, or is it agreed that that is his signature?

(Testimony of Chet L. Parker.)

Mr. Ryan: He does not recall signing it. I am not disputing it is his signature.

Q. (By Mr. Strayer): Now, is it your testimony if that is Mr. Stegmann's signature it was not signed in your presence, while you were there?

A. No.

Q. It had not been signed at the time that you left the Winans' place? [145]

A. This is the first time I have ever seen this piece of paper, so I would not be able to know anything about when it was signed or was not signed or when signed.

Q. You would know if it was signed while you were there, would you not?

A. If I saw this, I would know, but this is a new one on me. I didn't even know this yellow one was in existence.

Q. Did you tell Mr. Winans that Mr. Stegmann should not sign it?

A. No, not especially I—in the discussion Mr. Stegmann said he saw no reason to sign it.

Q. Well, didn't you also tell Mr. Winans that Mr. Stegmann should not sign it because he had nothing more to do with the deal?

A. I said I could see no reason for him signing it, as I remember telling him.

The Court: You state that you had never seen that document before?

The Witness: I have never seen this yellow copy before. That is a new one on me.

(Testimony of Chet L. Parker.)

The Court: Have you seen Exhibit 26?

The Witness: I have seen this one here, correct.

Q. (By Mr. Strayer): Exhibit 26 you carried away from the meeting, did you not?

A. Yes, this one here, I am very familiar with that. [146]

Q. You did not see the yellow one at all while you were at the meeting?

A. No, I have never seen that. That——

Q. When you were first talking with Mr. Winans did you tell him that you had brought out Mr. Stegmann?

A. I told him from now on he was dealing with me.

Q. How did that conversation arise?

A. I was there doing business. I wanted to know about the deal, whether Stegmann paid the \$4,000 or not.

Q. What did you say to Mr. Winans when you walked in? You shook hands with him, I assume, told him you were Chet Parker?

A. I don't know exactly the exact words I said or the exact moment I said them. It is not vivid in my memory.

Q. Well, did you say, in effect, that you were there to close up the deal for the purchase of the property?

A. Not to close the deal but that Mr. Stegmann would be out of the deal from now on. It would be Chet Parker he would be dealing with. Mr. Steg-

(Testimony of Chet L. Parker.)

mann would be surveying, and anything to do with the set-out area, why, he would have to do it.

Q. Did Mr. Winans appear to be surprised that you had an interest in it?

A. Well, I don't know whether he was surprised or not.

Q. Had the \$4,000 been paid at the time you arrived? A. You mean the check given? [147]

Q. Yes.

A. I believe it was, but I am not sure.

Q. Do you recall any discussion about that payment at this meeting? A. No; no, I don't.

Q. All right. You left the meeting, then, with that copy of the Election to Purchase. Now, when did you next see or talk with Paul Winans?

A. I don't know when the next time was.

Q. Well, do you have any record to which you can refer that will remind you of that?

The Court: Mr. Parker, did you not testify a short time ago that in your discussions with Mr. Stegmann at The Dalles you had asked Mr. Stegmann to continue with the deal and pay the \$4,000 because you were under the impression that the option was not assignable?

The Witness: Well, I was a little perturbed about maybe it could not be, yes.

The Court: Had you obtained legal advice in the meantime?

The Witness: No.

The Court: And yet your testimony is now that on the 17th you went to the Winans' office and ad-

(Testimony of Chet L. Parker.)

vised Mr. Stegmann not to sign the Notice of Election, that you told Mr. Winans that from now on Mr. Winans should deal with you, is that [148] correct?

The Witness: The night of the 18th.

The Court: On the 18th.

The Witness: Yes.

The Court: You were no longer concerned about the assignability of the option?

The Witness: No, I felt that the time the \$4,000 was given to him, why, that would be the end of it. I could have the deal from then on.

Q. (By Mr. Strayer): Have you referred to your diary, Mr. Parker? Can you tell when it was that you next saw Paul Winans?

A. Well, I saw him on August 31, 1951.

Q. Before you get to August 31, did you see him on the 28th? I notice that you were up at Lost Lake on the 28th. Wait a minute. Go back to August 27th. Your diary states that you called Paul Winans at Hood River and asked him when he wanted to go to Lost Lake and set the corners. Do you recall making that telephone call?

A. Well, now that I read my diary, I do. I don't remember vividly, by any means.

Q. But it does come back to you that you called Paul Winans? A. Yes.

Q. You discussed with him the setting out of the reserved area? A. Yes. [149]

Q. Can you remember any of the details of that conversation?

(Testimony of Chet L. Parker.)

A. No; no, other than apparently when we would be up there to do the job.

Q. Well, when did you tell him you would go up there? A. Well, apparently on the 31st.

Q. You were up there on the 28th, were you not, doing something on the reserved area?

A. Yes, but I don't believe Mr. Winans was there.

Q. You do not think that you saw Mr. Winans on the 28th? A. I don't believe so.

Q. But you were up at the lake with Mr. Stegmann pointing out to him what you wanted him to do in making the survey? A. Yes.

Q. What were your instructions to Mr. Stegmann?

A. I didn't want him to give to Winans any more trees than he had to. I wanted all the timber other than—I was not too perturbed about the cedar, but I didn't want him to get any fir or white pine, larch or hemlock if I could possibly get out of it.

Q. Well, now, on the 28th you had received a title report from the title company, and you had had another meeting with Multnomah Plywood, had you not, at which you had proposed to sell the property to them at \$180,000, is that correct?

A. Yes, apparently.

Q. Your diary indicates that on the 29th you went to Portland [150] to get some legal advice?

A. Yes, sir, to see Mr. Ferris.

(Testimony of Chet L. Parker.)

Q. What was the thing that you thought you needed legal advice on?

A. Well, there was several items came up. One was a trust for my boy. I remember that, and as to the purchaser's policy, an owner's policy when I didn't own the property, any property, and I had this deal with Multnomah cooking, and they would need to have a title policy.

Q. Pardon me. I didn't understand what you said. You say you had a purchaser's or owner's policy?

A. No, not at that time. I was perturbed about them wanting a purchaser's policy——

Q. I can't understand you. You were perturbed about not what? I didn't catch the word you used.

A. We was cooking up a deal with Multnomah. I didn't have any policy of title insurance. I didn't know that I could purchase a policy of title insurance until I owned something I had—that was in my name, and he told me that he thought I was wrong, and he called someone.

Q. Mr. Ferris, you mean?

A. Yes, to verify it, I guess you would say, that he was right and I was wrong, and he assured me that I had a perfect right to purchase a purchaser's policy of insurance with what I had. [151]

Q. And that that was the way to handle it in your dealings with Multnomah Plywood?

A. Well, I don't think he advised me as to how to deal with Multnomah Plywood because we hadn't went far enough on the deal with Multnomah

(Testimony of Chet L. Parker.)

Plywood, but we knew that they would want a title insurance policy because in a previous transaction that is what they wanted.

Q. Well, did you tell Mr. Ferris that you had an option or contract to buy timber in Hood River County?

A. Well, I left all the instruments in his office. He looked them over.

Q. Oh, I see. You left with him the option, the assignment of option, and the notice of election to purchase, did you?

A. I don't know how many I left. He would know, but I left the title report, I think, and the option, possibly some other papers.

Q. Then you left the office, or did he make his call while you were there?

A. I think he made the call while I was there.

Q. Then you left and left the papers with him?

A. Well, I believe I did. I mean, I left, I know, but whether I left the papers or not I am not sure about.

Q. When did you get the papers back?

A. Well, it seems that my wife got them the next morning.

Q. What is that?

A. I think my wife might have got them the next morning. [152]

Q. This was on the 29th? A. Yes.

Q. Did you tell Mr. Ferris that you had a deal on to sell the timber to Multnomah Plywood or to some other purchaser?

(Testimony of Chet L. Parker.)

A. Yes, I think, I think I told him who it was.

Q. In other words, you laid before him the problem: "Here are the papers I have got, the documents of title. I think I have got the property sold. Now, how can I handle this detail?" Is that what you told him, in substance?

A. Yes. I told him I was in a kind of a jam, let us say, I couldn't see how I could—I didn't have a title policy, and how could I give any to anyone else, and I didn't know that I could purchase. I told him I didn't know on an option that I could purchase a purchaser's policy.

Q. You also asked him about this purposed trust arrangement for your son, did you? A. Yes.

Q. Did you tell him you were thinking of putting title to both of these tracts of timber in your son?

A. I don't know whether I referred to these. I told him tracts of timber and various things. I told him it was in my mind to set up something.

Q. Did he advise against that?

A. Well, he spent 15 minutes on it telling me that my idea was all haywire; it was all wrong. I went away a little [153] discouraged, I might say.

Q. Up until that time and after that, in fact, Marsh & Marsh at McMinnville had been your attorneys, had they not?

A. Well, and Mr. Ferris.

Q. You had been going to Mr. Ferris, too?

A. Oh, yes; previously I knew Mr. Ferris.

(Testimony of Chet L. Parker.)

Q. Both of those firms have done work for you and had been doing work for you in the past?

A. Previous; oh, yes.

Q. Yes? A. Yes.

Q. I presume the reason you went to Mr. Ferris was because he was closer than the Marsh boys out at McMinville; is that right?

A. That's right.

Q. Did you think that the deal was so complicated or your problem was so complicated that you could not do it by telephone, could not get your advice by telephone?

A. Well, on this trust setup it certainly was complicated. I thought it would be, and I certainly was not disappointed. It was so complicated that he advised me to come back a month later and he would give me more dope on it or something.

Q. Before you went down to talk with Mr. Ferris had you asked the title company as to just how that detail of that insurance problem could be handled where you were making a [154] sale of property?

A. When I didn't own it yet or had it in my name?

Q. What is that?

A. I am not clear; the same problem that I was confronted with when I went to Mr. Ferris' office?

Q. Yes.

A. No, I didn't ask them whether I could buy a purchaser's policy on an option before I had it paid for; no, I did not.

(Testimony of Chet L. Parker.)

Q. It did not occur to you to ask the title company about that?

A. No; in fact, I presumed that I couldn't.

Q. All right. Let's get on down, then, to the 30th which, I believe, was the day that you went into the title office and ordered a purchaser's policy, was it not, or was it ordered before that?

A. No, I think it is—my diary says it is on the 30th, and I am referring to my diary. I certainly could not recollect that date out of memory.

Q. Well, that would be the date that you ordered them rather than the day that you picked up the policy because I notice that they told you that you could get a policy the following day so the 30th would be the day that you ordered the policy for \$125,000 and paid a premium on it, is that right?

A. I remember giving them a check promptly.

Q. Your diary entry on August 30th also indicates that you [155] saw Walter Stegmann in town. I presume that means in Hood River, does it?

A. I don't know where.

Q. "He had been with Winans today working on their housing financing, and Paul Winans said to tell me if he saw me that he could and would go to Lost Lake now and agree with me on the land to set aside."

A. Well, your language is better than mine. It really says "seen," I have here. You said "saw." It says "seen" here. Your language is better than mine.

(Testimony of Chet L. Parker.)

Q. The sense of it is the same, is it?

A. Yes.

Q. Do you recall Stegmann telling you that?

A. Yes; well, since I read the diary it reconstructs this thing in my mind.

Q. As you reconstruct it, Stegmann gave you a message from Winans that he was supposed to give to you?

A. Yes.

Q. All right. Then, on the following day your diary indicates that you and Walter Stegmann and your son, Myron, Paul Winans, Ross Winans all went to Lost Lake to set out that 8.8 acres. Now, I wish you would tell us about that trip, Mr. Parker.

A. Well, we drove all in the same car. I believe it was my car, but I am not sure—from Winans' office to Lost Lake, and we cut some brush and pulled a tape around in the brush, [156] measured a little land. Mr. Stegmann took a lot of notes, and that's about all. We went back home.

Q. Going back to August 30th for a moment, I notice a note in your diary that after Stegmann gave you this message from Winans: "I called Paul and confirmed it." Does that mean that you called Paul Winans?

A. Well, apparently.

Q. Do you have any recollection of having done that?

A. No, I don't remember calling him.

Q. Then on the 31st you were up there, and you were helping in the survey of this reserved area, were you, or was that the survey of the tracts themselves?

A. No. I was helping Walt survey the—I really

(Testimony of Chet L. Parker.)

don't know what we was surveying. We was running around there cutting brush, pulling a tape through the brush. I guess we were surveying the excluded area or attempting part of it or something.

Q. Now, did you have any discussion with Mr. Winans on that day about anything?

A. Yes, about the amount of acres.

Q. Anything else?

A. Well, he wanted all the lake frontage.

Q. You had an argument about that particular area that would be reserved to him; is that right?

A. Sure; he was getting everything but a hundred feet of lake [157] frontage, and I thought to myself I would like to have a little more than a hundred feet left of lake frontage. I remember having a violent argument. No one engaged in fistcuffs exactly, but I won't deny that I wanted to.

Q. That is the only thing that you can recall discussing with Mr. Winans on that day?

A. Well, we made a discussion, and finally he said I could have—he would be very generous with me, would give me three or four hundred feet of frontage, and he would take fourteen or fifteen hundred feet and any other additional property would be had into the acre. I believe we sat down and figured out that at that time.

Q. Well, I note that your diary says you got back to Hood River too late that evening to get your title policy, and on the following day, on September

(Testimony of Chet L. Parker.)

1st you and your wife went to McMinnville to see some timber on Pea Vine so I take it that is where the Labor Day week end came in which resulted in your not getting the policy until the following week; am I right on that, Mr. Parker?

A. Well, I suppose yes.

Q. What is this timber down on Pea Vine? Is that a locality, Pea Vine?

A. That is a mountain out of McMinnville.

Q. A mountain out of where?

A. McMinnville, Oregon. [158]

Q. What was that, timber you were buying?

A. Well, I don't know whether I was buying or someone—some sidewalk broker might have told me about it, apparently. I have here in parenthesis, "No good."

Q. In other words, you went down to look at a tract that you thought you might be interested in?

A. Well, yes, that is——

Q. Is that by any chance Mr. Stegmann's timber that you went to look at?

A. No, no; absolutely not. In fact, I believe—I am not real sure, but I believe that was concerning Mr. Johanson's timber.

Q. Well, now, I note according to your diary your next contact with Winans, or Stegmann, for that matter, appears to be on September 4th. Apparently you took a man by the name of Paul Wardell up to Hood River. Who was Mr. Wardell? Why did you take him up there?

(Testimony of Chet L. Parker.)

A. I took him up for that housing deal that Mr. Winans was cooking up, an irrigation business.

Q. How does it happen that you took him up?

A. Well, as I remember, as I indicated, from the beginning, I was somewhat slightly interested in this housing deal, and Mr. Wardell has been—his father was quite a businessman, quite a trader, a promoter, too, and Mr. Wardell—I mentioned it to him. [159]

Q. Mentioned it to whom?

A. Mr. Wardell; and he was going to go up and look at it, and, as I remember, I drove him up.

The Court: Look at what?

The Witness: This housing project.

The Court: Where was that? Where was the proposed site of the housing project?

The Witness: At Dee and Hood River.

The Court: Is that in part of that Lost Lake property?

The Witness: No, it is isolated by 20 miles or so.

Q. (By Mr. Strayer): As I understand your testimony, then, you took Wardell up to look at Winans' housing project with the thought in mind that you might be interested in going in with Winans on some kind of an arrangement on the housing project?

A. Well, no, not that I would go in with Winans. I thought that Mr. Wardell might go in with Winans, with Paul, Wardell and Stegmann and Winans would get together on a deal.

Q. Wardell, Winans and who?

(Testimony of Chet L. Parker.)

A. Walt Stegmann.

Q. What were you doing, just trying to help out Stegmann?

A. Well, I was being a good fellow.

Q. How did you get in touch with Wardell?

A. I drove out to see him, I think. I don't know.

Q. You looked him up to see if he might be interested in [160] this housing deal? A. Yes.

Q. Just as a favor to Stegmann and Winans?

A. Yes, and possibly a favor to Wardell, if it was a good deal as everyone was telling me it was a good deal. I presumed they knew.

Q. Were you or were you not still a little interested yourself in the housing business?

A. Well, if there was—very slightly. I had never told Mr. Winans I was interested.

Q. Did you see Mr. Winans on that day?

A. Yes—which Mr. Winans are you referring to?

Q. Well, either of them. I was thinking Paul Winans, but did you see any of the Winans on that day?

A. Well, I saw Ross Winans and, I think, Paul Winans.

Q. Did you discuss anything with them on that day?

A. I think I introduced Mr. Wardell to Paul Winans, and I talked to Ross Winans some time about my son, I believe, slightly. That's about all. I didn't enter into the transaction between Mr. Paul Wardell and Mr. Winans; very, very limited.

Q. Well, did you tell Mr. Winans that Wardell

(Testimony of Chet L. Parker.)

was interested in the housing project, or might be?

A. No. Mr. Wardell was there speaking for himself whether he would be interested or not. I introduced him and told him to [161] take off from there.

Q. Did you see Stegmann that day?

A. Well, I don't remember seeing him that day.

The Court: Was Stegmann interested in that housing project, also?

The Witness: Yes.

The Court: Stegmann and Winans and you were contacting Mr. Wardell who might go in with both of them?

The Witness: Yes.

Q. (By Mr. Strayer): I notice the next entry in your diary that seems to have any reference to this sale of timber appears to be on September 9. The entry in your diary says: "Lois and I drove to Mack to get bank draft tomorrow. Lois bank draft to the amount of \$95,000, is payment to full to Ethel Winans."

Do you recall that incident?

A. Well, I remember driving down there.

Q. To McMinnville?

The Court: I think we are getting into a new subject matter. It is 4:00 o'clock. We will take one more short recess. Then we will go to about 5:30.

(Recess.)

Q. (By Mr. Strayer): I think we were down to September 9th on your diary, Mr. Parker, which

(Testimony of Chet L. Parker.)

indicates that on that date [162] you and your wife drove to McMinnville to get a bank draft for \$95,000.00? A. Yes.

Q. Mr. Jake Wortman that was mentioned in there, he is an officer of the McMinnville bank, isn't he? A. Yes, I guess he is.

Q. Do you have any recollection of driving to McMinnville that day with Mrs. Parker?

A. I don't remember driving, but I think we did.

Q. You what?

A. I think we drove down to McMinnville.

Q. You do remember that, and do you remember that the purpose was to get a draft for \$95,000?

A. Yes, that was the purpose, as I remember it.

Q. And that was the draft in order to close the transaction with Mr. Winans, was it?

A. Yes.

Q. How did it happen that you went down to get a bank draft? Why didn't you use a check?

A. Well, as I remember, Mr. Winans had told me that I would have to pay him with a certified check or something like that, bank draft.

Q. When was that conversation?

A. Well, sometime during the surveying or sometime previous to this. [163]

Q. Sometime when you were up surveying the reserved area, you mean?

A. Well, either that or previous to this. When I had met him it came up.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Would you try to speak up a little louder.

The Witness: But it had, previous to this Sunday. He had indicated to us that he wanted cash.

Q. (By Mr. Strayer): How did that conversation arise?

A. Well, I wanted to know—I think I asked him which he was going to take, my personal check or a draft or what it was, and I think, as I remember it, he indicated that a certified check or a bank draft——

Q. Did you point out to him that he had taken personal checks for the two first payments?

A. No, I did not point it out to him, but in my own mind I felt that in this case he was giving title, and before he didn't give any title.

Q. So that it was logical to require a bank draft in this case, you mean?

A. Well, we had in the past been required to give, I would say, guaranteed payment in other deals.

Q. You didn't argue with him about that?

A. No.

Q. You thought that was a reasonable request?

A. Well, I thought it was. It didn't make any difference [164] to me. It would be the same difference, and I had to pay it.

Q. Where did that conversation take place where Mr. Winans told you he ought to have a cashier's check or a bank draft?

A. Well, I don't remember when or where.

(Testimony of Chet L. Parker.)

Q. Who was present at the conversation?

A. I don't remember that. I remember him telling me, or I am not sure whether I didn't tell him that I would give him that if he wanted it. Maybe I told him that.

Q. Well, now, how did it happen that you drove down to McMinnville on the Sunday to get a bank draft?

A. Well, I told him that that deal had to be finished on the 10th.

Q. When did you tell him that?

A. Well, previous on some of these surveys. There seemed to be a lot of delay in setting aside this reserved area. In fact, so far as I was concerned, too much, and after the argument we had on the bridge, why, I was a little bit, I was a little bit angry, a little mad about it.

Q. Do you have a pretty clear recollection of telling him that it had to be closed by the 10th?

A. I told him if the deal was not being completed by the 10th I didn't want anything to do with it, just forget about the deal.

Q. Do you have a clear recollection of [165] that? A. Yes.

Q. Have you refreshed your recollection from your diary or any other source?

A. No, I remember.

Q. Is there anything in your diary about that?

A. Well, I would have to read it to see.

Q. Is it your recollection that on that same

(Testimony of Chet L. Parker.)

day whenever it was that you told him it had to be——

(Thereupon there was discussion between counsel off the record.)

Q. (By Mr. Strayer): Oh, yes, Mr. Jaureguy calls my attention to September 8th of your diary, the last sentence:

“Winans called and said they were ready to deal finish.”

Does that bring anything back to you?

A. Well, apparently they did.

Q. Well, do you remember?

A. It is not vivid in my memory by any means.

Q. Well, is it in your memory at all?

A. Well, since I read the diary it naturally influences my memory, and I think I remember it, yes.

Q. I noticed that you had spent the night before, the night of the 7th, at Lost Lake, I guess, with your wife and your boy. You camped out there on the lake, is that right?

A. Well, adjacent to the lake. [166]

Q. Yes, and you drove down from Lost Lake, according to your diary, at 9:00 a.m. on the morning of the 8th, I assume, down to Hood River; is that right?

A. I don't know whether 9:00 a.m. is——

Q. I don't care about the time of the day particularly. A. Yes.

Q. But is that your recollection that after camping out all night up there you drove down in the morning to Hood River? A. Yes.

(Testimony of Chet L. Parker.)

Q. Where were you when Mr. Winans called you?
A. Well, I don't remember.

Q. How did he know how to reach you by the telephone?

A. Well, I don't know whether I called him or he called me.

Q. Your diary says, "Winans called," does it not?

A. Well, but then I quite often used that word loosely. I called or he called or Bill Jones called.

Q. You think you might have called Winans, and he told you they were ready to close?

A. I am sure I called Winans.

Q. That would be the reason that you left on the following day to get the bank draft?

A. Yes, and that I had assured him on the 10th I wanted that deal made.

Q. Is it possible that on this telephone call on the 8th that is the time that you told him it must be closed on the [167] 10th?

A. Well, it is possible, or previously.

Q. Is it possible that that is the time also that he told you it must be a certified check or bank draft?

A. Yes, at the same time he told me that, and it could have been that.

Q. That might have been the time?

A. Yes, it could have been that.

Q. Well, now, how did you arrange for a bank draft on Sunday, Mr. Parker?

(Testimony of Chet L. Parker.)

A. You have to ask my wife that. I didn't obtain that.

Q. She was the one that arranged for a bank draft at McMinnville? A. Yes.

Q. Is it your recollection that you drove back to Hood River that night?

A. Well, I don't remember where we drove to.

Q. Can you tell from your diary?

A. I don't notice anything in here saying where we went.

Q. All right, then. Referring to September 10th, the September 10th entry in your diary, you describe there some discussion with Mr. Winans about a price that you had agreed on as \$4,750 for some extra land that he wanted to reserve. Now, when did that subject first come up? Was that occasion on September 10th, or had you discussed that [168] before?

A. No, we discussed that on the bridge at——

Q. Had you discussed the amount of extra land that he wanted?

A. Yes, there was discussion about that.

Q. That was on your survey trip on August 28th, was it?

A. Yes, where Mr. Stegmann was the surveyor for us.

Q. That is August 31st?

A. It was whenever Mr. Ross Winans and Paul Winans and my son and I were up there.

Q. Yes; well, according to your diary that was

(Testimony of Chet L. Parker.)

on August 31st. On that occasion he told you he wanted extra land?

A. Yes, well, figured out there would be extra land.

Q. When did you agree on a price for that extra land?

A. We agreed on \$1800 an acre, something like that.

Q. How did you arrive at that figure?

A. It wasn't easy. It took a half-hour arguing back and forth as to the values, and he wanted to take in all that creek running on up into this one-quarter, of this other 16 section. I told him I didn't want any reservation going into that 16 section. Then he dropped that idea, and then he wanted all the frontage and would take—and, as I remember, 300 feet back from the lake front, but then I could have the rest of it cutting me down to probably 150 feet on the front and cutting off about half a million feet of timber. I didn't mind him getting lake frontage, but I didn't [169] want him to get any of my good trees, and that is what we was arguing about.

Q. How did you arrive at the value of \$1800 an acre?

A. Well, if that was the value—it was somewhere in there—that I indicated to him, that is what I would take for it, and any additional land would be whatever value I set at that time, but I didn't want it to include any timber, and I would not hold still for any timber going into any reserved area.

(Testimony of Chet L. Parker.)

Q. Did you finally agree on the reservation? You finally did agree, did you not? A. Oh, yes.

Q. And under that agreement did he reserve any timber?

A. No, no timber that is worth a darn.

Q. So that your arrival at a figure of \$1800 or whatever it might have been per acre was not based on the value of the timber? A. No.

Q. Well, then, on what did you base the price of \$1800 an acre?

A. Whatever value it was was the most I could get because we spent 15 minutes arguing about an extra \$500 an acre. In other words, it was sitting right there bargaining and how much I could get out of it. He didn't think it was worth near as much as I was charging him for it.

Q. Did you think it was worth \$1800 an [170] acre? A. Then did I think so?

Q. Yes.

A. Well, it was all—whatever I could get, that is all I got. No, I didn't think it was worth that much, not as far as I was concerned, it wasn't worth paying taxes on.

Q. Well, did you agree then on this \$1800 an acre or whatever figure that may have been on August 31st when you were arguing up there on the bridge?

A. Yes, we agreed on whatever it would be an acre, whatever it would figure out to be.

Q. Well, now, of course, the total price for the additional reserved land would have to be figured

(Testimony of Chet L. Parker.)

out when you had the exact acreage in the reserved area, would it not? A. Pardon me?

Q. The total price that Mr. Winans was to pay you for the additional reserved area would have to be based upon whatever acreage figure you had, multiplied by the number of acres that he retained, would it not?

A. To be determined at a later date because——

Q. That was merely preliminary. I want to know when that was determined.

A. At a later date.

Q. Yes, but what date?

A. Well, when Mr. Stegmann and Mr. Hines got their survey completed so that they would know how many additional acres [171] he would have.

Q. When was that, on what date?

A. I guess they completed it on the 10th. I don't know.

Q. When was your first knowledge that it had been computed and worked out to be \$4,750?

A. When my wife brought home a check and the deed.

Q. You did not know before that? A. No.

Q. Well, then, your entry on September 10th: "Winans said he might want more land, and we agreed on a price of \$4,750 for the land,"—when was that entry made?

A. That must have been made right about the time.

Q. You didn't get the deed and didn't deliver

(Testimony of Chet L. Parker.)

the check until the following day—your wife didn't?

A. Well, what I meant to say is the notes that went in the deed say in the description so we would know how much area it would be.

Q. Did you see that on the 10th, the deed to that——

A. Well, I saw some notes so I would know how much area there would be in addition.

Q. Well, what did your entry there mean: "Winans said he might want more land, and we agreed on a price of \$4,750"?

A. We agreed at that time on \$4,750 on additional land he would want, only he might want more from there before I got the deed back, before I got the deed. [172]

Q. Now, when was that that you and Mr. Winans agreed on this figure of \$4,750? Was that on the 10th?

A. That was previous to the 10th, I think.

Q. On what date was it?

A. I don't know what date it was, whenever we was up there.

Q. Well, that would be August 31st, you mean?

A. Possibly could have been, yes.

Q. Well, then, we have got to backtrack, then. You did something more than talk about \$1800 per acre. You talked about a fixed price for that additional area, \$4,750?

A. But it was figured on so much an acre.

Q. Yes, but you arrived at apparently how much

(Testimony of Chet L. Parker.)

per acre it was because you arrived at a fixed price of \$4,750 on August 31st; is that your testimony?

A. Well, Mr. Winans reserved that end, that Mr. Stegmann's figures might be wrong. He said if Mr. Stegmann's figures is right, then that would be the right amount; but if Mr. Stegmann is wrong, then it would not be that amount.

Q. I see. So you had what you might call a tentative agreement on August 31st on \$4,750, but that was subject to confirmation of the survey; that is your testimony? A. That's right, yes.

Q. On September 10th, then, your entry in your diary is merely making reference to a previous agreement which you had with Mr. Winans, is that right? [173] A. Well, yes.

Q. And you made reference there to the difficulty they were having in figuring out the metes and bounds and what a difficult job it is so, apparently, at that time there had still been no absolute verification of the acreage; am I correct in that assumption?

A. As far as I was concerned, no verification.

Q. All right. Now, as I understand it, Mr. Parker, I understand that you had other business on the 10th and were not able to take care of this matter yourself, and you turned over to Mrs. Parker to close the deal. Am I right on that?

A. Yes.

Q. I note, according to your diary, that you instructed her to consult with Attorney Abraham in Hood River? A. Yes.

(Testimony of Chet L. Parker.)

Q. Mr. Abraham had done legal work for you in the past, had he? A. Yes.

Q. Just exactly what did you tell Mrs. Parker to have Mr. Abraham do?

A. I told her to have Mr. Abraham close the deal.

Q. What did you mean by that?

A. Pardon me?

Q. What did you mean by to close the [174] deal?

A. Well, give the people the money and take a deed back.

Q. She could have done that herself, couldn't she?

A. I don't know whether she could have or not.

Q. You had a bank draft for \$95,000, and she could have handed that bank draft over to Mr. Winans and could have taken the deed, couldn't she?

A. Well, if it would be as simple as that, yes, she could, but I don't believe that attorneys do things that way. I believe that they had to go back and check the record to see if what we had on our reservations were taken off the record, and I don't believe she is capable of doing it. At least I didn't feel she was.

Q. That is exactly what I am trying to find out. You wanted Mr. Abraham to do something more, to check over that timber. You wanted him to check the record to see if there had been additional transfers or mortgages, anything else?

A. Yes, and to look at this bargain and sale.

(Testimony of Chet L. Parker.)

Q. And draft a new deed?

A. Yes, because that was a new one on me.

Q. All right. Now, your diary entry indicates that Lois—I take it that is Mrs. Parker—“got a deed, bargain and sale, 4:30 p.m. Too late for Mr. Abrahams to get a good look at it.”

I take it that is your entry, that that is based on something that she told you. You had no personal knowledge [175] of that, is that right?

A. She told me. I wasn't there.

Q. You say: “Lois and I finally decided to put it in my name instead of Associated Engineers, but we can write it in, I guess. Lois and Abrahams decided to wait until morning to close the deal.”

Do you recall that discussion with Mrs. Parker?

A. Yes.

Q. On the evening of September 10th?

A. Yes, it would have to have been the evening.

Q. Well, now, as a matter of fact, did Mrs. Parker show you the deed that you were figuring on filling in? A. I think she did.

Q. As a matter of fact, wasn't that merely a copy of the deed that she had at that time?

A. I think it was.

Q. Do you know where she got that copy?

A. No, I don't know where she got the copy.

Q. Didn't she tell you that Mr. Stegmann had given it to her? A. No.

Q. You looked the deed over that night?

A. Well, I looked at it.

The Court: What night are we talking about?

(Testimony of Chet L. Parker.)

Mr. Strayer: The night of September 10th. [176]

The Court: Is that a Monday?

Mr. Strayer: Pardon?

The Court: September 10th is a Monday?

Mr. Strayer: Yes.

Mr. Buell: Yes.

Q. (By Mr. Strayer): You recall looking at a copy of the deed that night of September 10th?

A. Well, I possibly looked at it, but the reason I question a little bit, I don't know anything about a deed so I suppose I might look at it and still not know anything about it. I don't understand it anyhow.

Q. To refresh your memory, Mr. Parker, had not Mrs. Parker been up to see Attorney Abraham on September 10th before you got home that evening? A. Yes.

Q. As a matter of fact, don't you know that the deed, the copy of the deed, had been delivered over to Mr. Abraham on that day, September 10th?

A. Well, as I recollect, she told me so.

Q. Well, now, didn't he keep the deed, that copy of the deed?

A. I don't know whether he did or didn't.

Q. If he did, you could not have looked it over?

A. That's right.

Q. All right. But you do recall discussing with Mrs. Parker [177] who your grantee was going to be? A. Yes.

Q. By that time you had given up any idea of putting in your son's name? A. Yes.

(Testimony of Chet L. Parker.)

Q. But you were still playing with the idea of possibly putting in the name of Associated Engineers? A. That's right.

Q. Associated Engineers, as I understand it, is an assumed business name of your own?

A. Yes.

Q. You are the sole owner of the business known as Associated Engineers?

A. Yes, I am now.

Q. Were you at that time?

A. Yes, at the time of this entry there.

Q. And you instructed your wife then to write in your name on the deed when the transaction was closed the following day? A. Yes.

Q. Did you see Mr. Stegmann that day at all?

A. I don't think I did, but I might have.

Q. Did you know that he was over in Vawter Parker's office working out the final details of this deed?

A. I think I knew about it. [178]

Q. How did you find out about it?

A. Well, he would have to be there. I mean, possibly my wife told me.

Q. I note in the latter part of your entry in your diary on September 10th you say that you paid Walt off for his work on the lines, and in substance you say that Walt apparently had a hard time in working out the descriptions and said, in effect, that if he had had anything to do with the deal he would have told Winans to go to hell, words

(Testimony of Chet L. Parker.)

to that effect. Does that bring it back to you, your discussion with Mr. Stegmann?

A. Well, it is probably unfortunate that I used this kind of language, but I remember Walt having to put the description in to agree with, I believe it was, Mr. Hines. I never met Mr. Hines, but Walt used the name.

Q. Never what?

A. I believe it was Mr. Hines, whoever the other surveyor was, for the Winans.

Q. You say you paid Walt for his work. This entry is on September 10th. Is it your testimony that you paid him on that date for the work that he had done?

A. I don't know where the check is. I gave it to him. If I could see the check——

Q. I hand you Exhibit 41, Mr. Parker. Will you look that over? Is that the check that you gave to Mr. Stegmann for [179] the work that he did in surveying the Winans' property? A. Yes.

Q. What was the date of that check?

A. 9-12-51.

Q. September 12th; and is that—does that refresh your recollection as to when the check was given, and is that date a mistake?

A. Well, it possibly could be a mistake. The date wrote in the check could be a mistake. I wrote it; consequently, it could be a mistake.

Q. You remember making out the check, do you?

A. Yes.

(Testimony of Chet L. Parker.)

Q. It is your recollection that you made it out on September 10th?

A. Well, I don't know which date I made the check out.

Q. Well, your diary says you did it on the 10th.

A. Well, I think it was the 10th, though it has a better memory than I have, certainly.

Q. Did you deliver it to him the same date that you made it?

A. Yes, I gave him this check. Well, this——

Q. You have a distinct recollection of making that check out and handing it to him on either the 10th or the 12th, whichever is the correct date?

A. I definitely gave it to him. [180]

Q. At the same time it was made out, on that same day?

A. Well, I don't say that it was the same day. I think it was.

Q. Well, do you have a reservation in your mind? A. Well——

Q. Did you hold the check for a while before giving it to him? A. I don't think I did.

Q. What is that?

A. No, not for any length of time.

Q. Well, now, what do you mean by any length, several days?

A. No; no, I mean, by any length of time, a day or two.

Q. Might you have held it a day before you gave it to him? A. After it was signed?

Q. Yes. A. No.

(Testimony of Chet L. Parker.)

Q. May I have that back, Mr. Bailiff? This check I notice is for \$382.00, and you have marked down at the bottom: "Engineering & showing Multnomah Plywood $\frac{1}{4}$ corner, Lost Lake, in full 8-14-51 to 9-10-51."

How did you go about computing the amount of that \$382.00?

A. I asked Mr. Stegmann how much he would take to do the job for me.

Q. When did you ask him? [181]

A. Just when the first negotiations started on—when I purchased this other thing, and he was supposed to be the surveyor. He was hired to do the surveying. Then I asked him how much it was going to cost me. There was two things I wanted to know. I wanted to know who was going to do it and how much money it would cost, and I asked him at that time how much money it would cost, and that is less \$20.00 to show Mr. Kenney that day's work.

Q. Less \$20.00 what?

A. Going up that day with Mr. Kenney, showing him the corner.

Q. You mean you paid him \$20.00 more than this check?

A. No, this check included \$20.00 more than the survey came to.

Q. Then you paid him \$362.00 for all that other work, did you?

A. Well, the survey is what I paid him for.

Q. Your testimony is that you had an agreement

(Testimony of Chet L. Parker.)

with him on August 14th when the survey was arranged that you would pay him this amount?

A. Yes, we had an agreement that I would pay him so much for his putting on the survey.

Q. How much? A. Pardon me?

Q. How much? [182]

A. Well, as I remember, it would be \$362.00. I remember paying him \$20.00 for a day's work, and that would be \$20.00 less, and would be \$362.00.

Q. Well, then, he was on your payroll at \$20.00 a day from August 14th until September 10th; is that the way you arrived at it?

A. No, that has nothing to do with it whatsoever.

Q. What was your arrangement with him on August 14th?

A. I think it was August 14th, but whenever it was that he agreed to do the survey he told me how much money he would charge me to do that work, and I paid him for that.

Q. How much did he tell you he would charge you?

A. Well, it must have been \$362.00.

Q. How did you arrive at that figure?

A. Well, he arrived at the figure.

Q. How did he arrive at it?

A. I don't know how he arrived at the figure. As I remember, it was around \$500.00, the first figure he quoted me. I told him that was too much money, and that is the figure we came up with.

(Testimony of Chet L. Parker.)

Q. When he told you he would charge you \$362.00, you said that would be all right?

A. Well, I agreed to that.

Q. He did not give you any basis on which he computed \$362.00? [183]

A. No.

Q. Didn't he tell you how many days it was going to take? How many days actually did he work up there surveying?

A. I don't know how many days he worked.

Q. Didn't you say that a surveyor got about \$20.00 a day?

A. No, I did not.

Q. What did you say about that?

A. I said I paid Mr. Stegmann \$20.00 to show Mr. Kenney the corner. That didn't have anything to do with surveying. He was just to show Mr. Kenney the corner so Mr. Kenney could cruise that piece of timber. I paid him \$20.00 for it.

Q. Do you know how much you have to pay a regular surveyor per day?

A. Well, I have a lot of surveying done, and Mr. Walker generally does my surveying, and he generally does not describe it by the day. I tell him what I want done, and I pay him the money for it. I don't know what he charges per day.

Q. You have no idea what you have to pay by the day for surveying services?

A. I suppose it would depend on how badly a man wants to make some money.

Q. Well, now, I take it then that on that night of September 10th your wife informed you it had been too late to close the [184] deal that day and that

(Testimony of Chet L. Parker.)

they were going to complete it the following morning; right?

A. I think that is probably what it was.

Q. I notice the following morning that you went up to Fifteen Mile Creek. What were you doing, looking at timber up there? A. Yes.

Q. Was that timber that you thought you might buy, or were you selling it?

A. No, I was supposed to be buying from a John Marsh.

Q. John Marsh timber?

A. I was supposed to be buying it from John Marsh.

Q. Marsh? A. Marsh.

Q. That was located on Fifteen Mile Creek?

A. Yes.

Q. Did you buy the timber?

A. No, I did not.

Q. How did you learn about that timber?

A. From Mr. John Marsh.

Q. Did you talk to Marsh about it?

A. Why, certainly I talked to Marsh about it.

Q. On that day?

A. Well, I don't know—no, I don't think I did on that day.

Q. When did you talk to him, do you [185] know? A. I don't remember.

Q. Well, then, when you got back—were you gone all day on the 11th?

A. I don't remember whether I was gone all day or not, but I think I was.

(Testimony of Chet L. Parker.)

Q. When you got back did you find out from—
by the way, I notice apparently part of this entry
for September 11th appears as though part was
made by you and part made by Mrs. Parker, is that
right? A. Yes.

Q. Well, now, which part was made by you?

A. Well, I printed it, and she wrote it.

Q. What is that?

A. The printing is mine, and the writing is hers.

Q. Now, I have a typed copy. I do not know
where one leaves off and the other starts.

A. One says, "Left Hood River to be at Abraham's office." That is the beginning of hers, and
the last of hers is, "all Myron and Chet do is look
at timber and bring rattlesnake rattles home."

Q. I notice on the part you made, the entry you
made, you went to Fifteen Mile Creek, and you got
to Hood River after dinner. Would that be at night
or afternoon?

A. I don't know whether it was night.

Q. Do you call dinner the evening meal or the
noon meal? [186] A. Well, I am a farm boy.

Q. Dinner to you is lunch, is that right?

A. Well, yes.

Q. So that would get you back—

A. Well, sometimes, sometimes not.

Q. What is that, sometimes, sometimes not?

A. I get it somewhat confused. My wife calls
dinner the evening meal, and I call sometimes dinner
at dinnertime.

Q. I notice that when you got back that after-

(Testimony of Chet L. Parker.)

noon or evening, whichever it was, you asked the title company for an owner's policy; right?

A. That is what it says.

Q. So apparently, you had ordered an owner's policy before September 11th, and they had agreed to exchange the purchaser's policy for the owner's policy; is that right? A. Yes, apparently.

Q. All right. Now, taking up the—they told you it would be ready the following day, on the 12th. Now, taking up the part written by Mrs. Parker, what does this mean: "Left Hood River to be at Abraham's office"? Didn't you stay at Hood River?

A. I can't explain her writing, sir. She wrote it.

Q. You have no idea what that meant?

A. Well, I would think that Mr. Abraham's office is at Hood River, and she says she left Hood River. I would presume [187] that she made a mistake.

Q. Well, now, is it possible that you might have stayed at The Dalles that night, and she drove over early in the morning from The Dalles to Hood River?

A. Very possible that we did, or at Vancouver, Washington.

Q. Well, do you remember where you were when you had this discussion with Mrs. Parker about her trouble in closing this transaction?

A. No, I don't remember.

Q. Do you remember where you were when Walter Stegmann told you about all the troubles in getting the proper description of the deed?

(Testimony of Chet L. Parker.)

A. It seems like it was in Hood River, but I am not sure of that, though.

Q. Now, then, you learned, at any rate, when you got back that evening on the 11th, you learned from your wife that she had received a deed, that the deed had been recorded with your name filled in as grantee, that the \$95,000 draft had been delivered; right? A. Yes.

Q. On the 12th do you recall going in to the title company to pick up your title policy?

A. I don't recall that it was on the 12th, but I recall going in to get my title policy.

Q. Do you recall at that time Mr. Miller telling you that [188] there was a defect in the title or that the Government claimed ownership of the land?

A. Pardon me a moment. It must have been after the 13th when I got the title policy because I drove to Portland to get my purchaser's policy out of the bank, so, apparently, it must have been after the 13th that I got the—that I saw Mr. Miller. I would presume it was on the 14th. Yes, in fact, I entered it here as September 14th picking it up.

Q. Yes, I think I am mistaken about the dates. Let me see if I can get myself straightened out here.

I notice on the 13th in your diary you say, "Drove to Hood River." You drove from where, from The Dalles or Vancouver?

A. I don't know where we drove from. I would gather The Dalles.

Q. Then the entry here is that you, "Drove to Portland to get purchaser's policy."

(Testimony of Chet L. Parker.)

A. In the bank.

Q. In what bank?

A. Bank of California, I think.

Q. What was it doing down there?

A. Well, I suppose I left it there.

Q. What is that?

A. Oh, it might have been at McMinville.

Q. Did you have a safe deposit box at the Bank of California [189] at that time?

A. Well, I suppose we did.

Q. Pardon?

A. I don't know whether we did. We did have a safe deposit box. We also had some dead storage or something down there, too, whatever you call it. I don't know what you call it.

Q. Well, Mr. Parker, you know now that you had a safe deposit box in the Bank of California in 1951, don't you?

A. On September 13th, 1951, I don't know that I had a safe deposit box in the Bank of California, whether I did or I did not.

Q. Well, have you ever had a safe deposit box there?

A. Well, my wife purchased it and paid for it, and I never got into the box. I don't know when she got it exactly or when she let it expire, but she took some papers, income tax records, and put them in what they called dead storage or something, I think she called it. I have never been in there either. She has taken care of that, and I certainly would

(Testimony of Chet L. Parker.)

not remember whether on 9-13-51 that I had a safety deposit box in the Bank of California.

Q. Didn't you go to the Bank of California to get this purchaser's policy?

A. I don't know whether we went to the Bank of California or McMinnville.

The Court: Or where? [190]

The Witness: McMinnville.

Q. (By Mr. Strayer): Well, your diary says you went to Portland, doesn't it? A. Yes.

Q. You are not sure whether your diary is correct or not?

A. Well, we came from The Dalles and went to Portland, and I am sure that my wife got it out of a safe deposit box at the Bank of California.

Q. You are sure your wife got the purchaser's policy out of the safe deposit box at the Bank of California? A. Yes.

Q. On the 13th of September? A. Yes.

Q. Then on the 14th I notice that you say you left Hood River at noon, "Lois and I went to the Title and Trust Company at Hood River to turn in our purchaser's policy for our owner's policy now that we have it paid for and deed recorded."

And I notice under that date that it was under that occasion that Mr. Miller told you about the Government's claim of ownership, is that right?

A. Yes.

Q. Is that the first notice you ever had that the Government made any claim to this property?

A. If that was notice, that was the first notice

(Testimony of Chet L. Parker.)

or first [191] person telling me that the Government owned this piece of property.

Q. Up until that time no one had ever made any mention to you of any claim by the Government to this property? A. No.

Q. Prior to September 14th, 1951?

A. That's right.

Q. And your first notice of that came from Mr. Miller of the Title and Trust Company?

A. Yes, I presume it was Mr. Miller. I knew him as Mr. Miller.

Q. All right. Now, I take it from that that that includes everybody. Mr. Stegmann never told you about any claim of the Government to this property? A. No.

Q. Mr. Winans has never told you about any claim of the Government to this property?

A. No, he certainly did not.

Q. Nobody else did?

A. Nobody else did.

Q. Now, did you have any understanding with Mr. Miller as to what the future course was to be, what you might do about it?

A. Understanding, I never came to an understanding. I never ever came to an understanding with Mr. Miller about anything.

Q. You were shocked, I presume, to hear that your title was in question?

A. Well, I didn't believe him, to start with. I felt [192] that it just was not so.

Q. When did you first get confirmation of it?

(Testimony of Chet L. Parker.)

A. Well, I couldn't really answer that unless it was the time that the Forest Service wrote me a letter saying that they owned it, or whatever they said.

Q. Well, then, you believed it as so when the Forest Service wrote you a letter?

A. Well, not absolutely by any means.

Q. Well, Mr. Miller told you, did he not, that the Forest Service had told him that they made claim to the property?

A. Yes, he told me that.

Q. Well, didn't you go to seek legal advice on that, then? A. Yes, I did immediately.

Q. Immediately; whom did you see?

A. I saw Gene Marsh.

Q. On what date?

A. The next day, I believe.

Q. Or, in fact, the very same day, apparently?

A. Yes, I think I saw him——

Q. September 14th, "Drove to McMinnville to consult Gene Marsh. He said nothing to worry about as we had title policy." Is that right?

A. That's right. He told me it was ridiculous; that it could not be.

Q. What was ridiculous? [193]

A. That what Mr. Miller related to me, that it just couldn't be that the Government owned it, and these people had owned that all these years, and all that stuff.

Q. Let us go back for a moment. Just what did

(Testimony of Chet L. Parker.)

Mr. Miller tell you about this claim of the Government?

A. As I remember, he said that the Government claims the property, the 16th section, and I told him that my attorneys were Marsh & Marsh of McMinnville, and he said—he didn't indicate to me that it was the last word in it by any means, but he just told me that they told him they owned it.

Q. Did he tell you that the difficulty was because of the fact that the land had not been surveyed at the time of the admission of the state into the union?

A. I don't remember him telling me that.

Q. Then you were not able to pass that information along to Mr. Marsh when you talked to him, were you?

A. Well, I could have; I could have and I could not have. I don't remember that he told me that.

Q. All you remember telling him is that the Government claimed the land and that you had a title policy?

A. That was in my mind uppermost, that I had a piece of property that I didn't own.

Q. So what Mr. Marsh told you, in effect, was that the Government could not own it if the title company had issued a title policy; is that the idea? [194]

A. He gave me to understand more or less they didn't make any mistakes.

Q. Well, now, did you have any discussion with either Mr. Winans or Mr. Stegmann about this title difficulty?

(Testimony of Chet L. Parker.)

A. Well, I don't believe—I did with Stegmann, I think.

Q. How about Mr. Winans?

A. Well, maybe later, considerably later, but not anything concerning clearing it up or anything. That was after we got into a lawsuit, I think.

Q. According to your diary, on the 16th of September Mr. Winans had called or was trying to get in touch with you by telephone. Do you recall that?

A. Well, it seemed like when he was trying to get in touch with me my wife was there, and I came in later, but I am not sure about that, but I remember him, I remember him—remember of my calling in answer to his call. I distinctly remember that.

Q. But you do not recall having a talk with him?

A. Well, it seemed like the connection was poor, and he wanted to see me in a day or two.

Q. I notice on the 17th that you showed the property to a representative of the Vancouver Plywood, Mr. Olsen of the Vancouver Plywood, and took him out to show him the Lost Lake property. Was that as a prospective purchaser, or had your Multnomah Plywood deal fallen through by that date? [195]

A. They were so darn slow to deal that I was not going to mess with them.

Q. Had you told Multnomah Plywood about your title troubles?

A. I think I had, but I am not sure. In fact, I am very sure that I did.

(Testimony of Chet L. Parker.)

Q. Did you tell Vancouver Plywood, Mr. Olsen, did you tell him about the title trouble?

A. I told Mr. Olsen I wasn't sure I could give title to it.

Q. Did you tell him what the trouble was?

A. No, because I did not know myself.

Q. I notice on September 18th, according to your diary, you took out Mr. Patrick of Patrick Lumber Company, showed him the Lost Lake property, and he was impressed. Was he also a prospective purchaser?

A. Well, Mr. Crom really was. Mr. Patrick was with Mr. Crom, and Mr. Crom wanted to purchase another piece from him, and he had contacted apparently Mr. Patrick, and I took him up there.

Q. Was that the prospective purchaser?

A. Mr. Crom, yes, only I don't know whether that is the proper pronunciation or C-r-o-n, I think it is.

Q. Did you discuss this title problem with them?

A. I did with Mr. Crom.

Q. To some extent you did. You didn't know whether you could furnish good title? [196]

A. That's right.

Q. I notice on September 19th, according to your diary, you went to McMinnville and saw Mr. Marsh, "No satisfaction," and also saw Stegmann. Did you give Mr. Marsh any more details about the title trouble at that time?

A. Well, I didn't know much about titles or troubles. I certainly couldn't have given him much

(Testimony of Chet L. Parker.)

information, and I think he was supposed to find out the information for me or for himself and relay it to me and see how serious it was, as I remember it. That is the reason I went back on the 19th.

Q. I notice on September 20th, according to your diary, the Title and Trust people were down to see you, and also your diary indicates that Stegmann was there that night. Did you discuss with Mr. Stegmann these title difficulties that night?

A. Yes.

Q. Did he tell you that he had known anything about that before?

A. Well. I was kind of abusive to him.

Q. What is that?

A. I was kind of abusive to him. I didn't give him much time to tell me anything. I was a little angry about it.

Q. Did Mr. Stegmann ever tell you when he first learned of this claim of the Government?

A. No. I don't think—I don't know whether he did or didn't. [197]

Q. Never had that you can remember?

A. Not to my knowledge.

The Court: Why did you get angry then at Mr. Stegmann on the particular night if you didn't think that Mr. Stegmann knew anything about the defect in the title?

The Witness: I didn't know whether he did or didn't know, and I was sure—here I get a piece of

(Testimony of Chet L. Parker.)

property, and I run into a deal with him and Winans, and I was real mad about it.

Q. (By Mr. Strayer): Well, now, was that on that night of September 20th or at some prior time that Mr. Stegmann gave you back the check for \$25,000?

A. Well, whenever he gave it back, it was after this time. I don't know when he gave it back. Whenever he gave it back it is on the check because I immediately took it down and deposited it.

Q. You deposited it on the same day that he gave it to you?

A. I don't know whether it was the same day, but right away.

Q. Well, the check, I think, indicates that it was deposited or cashed and the money deposited in your account at the McMinnville bank on September 20th.

Now, is it your testimony, then, that Stegmann returned it to you on that date?

A. Well, or should have returned it to me, yes, on that date, [198] as I remember.

Q. Was it on that date, or was it some other date?

A. Well, I don't know that it was exactly on the 19th and the 20th of '51.

Q. It could have been the day before?

A. Very possibly.

Q. Could it have been several days before?

A. Well, it wasn't long before. I know that.

Q. Well, was it several days? A. No.

(Testimony of Chet L. Parker.)

Q. Could it have been two days?

A. It is possible, but I don't think so.

Q. It could not have been longer than two days?

A. Well, I think he gave it to my wife instead of to myself, anyway.

Q. Oh, he didn't even give it to you; he gave it to Mrs. Parker?

A. I think he gave it to Mrs. Parker.

Q. When did you first know that Mrs. Parker had it back?

A. Well, probably as soon as she got it, but I don't remember what date it was. It has been a year and a half ago. I can't remember what is the date she got it back.

Q. How did you find out about it?

A. Pardon?

Q. How did you find that it had been returned?

A. Well, she told me, I think, as I remember. Now, I am not [199] sure that he gave the check back to her or gave it back to me, but I know it was not very long we had the check when we put it into the bank.

Q. Who put it into the bank, you or Mrs. Parker?

A. I don't remember.

Q. You have no collection of that?

A. I think she did, but I am not sure.

Q. Well, do you ever remember talking with Mr. Stegmann about the return of the check?

A. Yes.

Q. When was that, at the time the check was returned?

A. Well, I think it probably was.

(Testimony of Chet L. Parker.)

Q. What is your best memory on it?

A. Of the conversation?

Q. Yes.

A. Well, I was kind of angry about this deal that here I—I was afraid, I told him if he attempted to cash that check I would have stopped payment on it.

Q. Why was that, because you were sore over this failure of title? A. I certainly was.

Q. When did you tell Mr. Stegmann that?

A. Well, I think it was on the day that I got the check back.

Q. It was not some earlier date?

A. No, I don't think it was.

Q. How did you know that the check had not already been [200] cashed?

A. Well, I was pretty well informed on that. Some of the bank officials told me that Mr. Stegmann had—well, I can't quite quote them exactly, but it was, in effect, that the sheriff was over today about an account or something on some deal and that—and I checked on the check to see whether it was cashed or not.

Q. Let's see if I get that straight. Someone in the bank told you that the sheriff had been over trying to attach Stegmann's bank account; is that right?

A. Well, something to do with the bank account, however they do it.

Q. Anyhow, the sheriff was looking for money or assets belonging to Stegmann: is that the idea?

(Testimony of Chet L. Parker.)

A. I suppose it was money. I gathered it was money.

Q. Because of that you felt sure that Stegmann had not cashed the check?

A. Well, I figured he had not, and I inquired.

Q. So when you saw Stegmann around the 20th or maybe a day or so before the 20th you then told him that there had been a failure of the title, and you were pretty sore about it, and if he tried to cash the check you would stop payment on it, is that right?

A. If he didn't give it back to me, why, I would stop payment on it. [201]

Q. Oh, if he didn't give it back to you, you would stop payment?

A. Yes.

Q. What did Stegmann say?

A. Well, he gave it back to me. I don't remember what he said.

Q. Did he endorse it at that time, or was it already endorsed?

A. No, I think he endorsed it then.

Q. You had no further discussion with Stegmann about it?

A. We possibly could have, but nothing I remember about.

Q. So then what is your recollection about what you did over at the bank on the check?

A. Pardon me?

Q. What is your recollection about what you did with the check after it was endorsed back to you?

(Testimony of Chet L. Parker.)

A. I think my wife took it to the bank and deposited it.

Q. You think that your wife took it?

A. Yes, I think she did.

Q. Did you tell her what to do with it?

A. I don't believe I did.

Q. Why did you deposit the check? Why didn't you just tear it up?

A. Well, something about her income tax. She had that figured out. It would show then as a matter of record that [202] it was set out on her income tax deal from one account to the other. We had two accounts at that time.

Q. This check was drawn on your personal account, was it?

A. I don't know how—she took care of the banking arrangements. I don't remember which one it was drawn on.

Q. There was some idea that the check ought to go through a bank and ought to have a bank endorsement showing it had been cashed for income tax purposes?

A. Yes, that is what I had in mind, or she had in mind, rather, apparently. I don't know. That is what she had in mind. She didn't exactly tell me, but I am positive that is what it was.

Q. Was it purely a coincidence that the check was redeposited in your account on the same day of the first meeting of the Title and Trust people in Mr. Marsh's office?

A. Was it purely coincidence?

(Testimony of Chet L. Parker.)

Q. Yes.

A. Well, I had nothing to do with the meeting with Title and Trust.

Q. Well, was it a coincidence that it happened on the same day?

A. Well, it certainly would have to be.

Q. You knew, did you not, Mr. Parker, that in making a claim on that insurance policy you would have to furnish proof of how much you paid for the property? [203]

A. What I knew about title insurance at that time you could write on a postage stamp.

Q. Is it your answer that you did not know it at that time?

A. I did not know anything about collecting from any title company. I didn't know anything about it whatsoever.

Q. You knew that Mr. Marsh was meeting on the 20th with the Title and Trust people, did you not?

A. I don't know when he was meeting on the 20th. When I was there, I knew he was having a meeting.

Q. Your diary says he was there on the 20th.

A. Well, they were down to see him, the Title and Trust Company, on the 20th. I say that here.

Q. Did not Mr. Marsh advise you that you would have to get the check for evidence of what you paid in order to prove your loss to the title company?

A. I don't remember him saying anything like that.

Q. You don't remember anything about that?

(Testimony of Chet L. Parker.)

A. No. In fact, I don't think he was very well—knew what he ought to do to get anything with it.

Q. You never talked with the title company or any of its representatives regarding this matter until after September 20th; right?

A. Other than Mr. Miller.

Q. Were you in Mr. Marsh's office on the 20th when the title people were there?

A. Well, I say so here. [204]

Q. I think you are right. "They were down to see Frank Marsh and myself and Gene was absent." Did they not ask on that day that you submit some evidence of how much you paid for the property?

A. Not that I remember.

Q. Didn't they ask you on that day how much you had paid for the property?

A. They might have.

Q. Didn't you tell them that you had paid \$125,000 for it?

A. I don't remember telling them that.

Q. Was not that always your position in your negotiations with the title company up until about the time that this lawsuit was filed?

A. No, they knew they had all the figures on it because they took—I paid them to photostat in their own office some of the documents that we gave them. They had all the data, whatever it was. They knew what we paid for it.

Q. Did you ever tell them that you got this \$25,000 check back from Mr. Stegmann?

A. I don't know whether I did or didn't.

(Testimony of Chet L. Parker.)

Q. Did you tell the title company people that you had paid \$25,000 for the option to Mr. Stegmann?

A. Yes, I think I told them I paid \$25,000 for the option.

Q. Yes, and you have never up until this afternoon—is the first time that you have ever said that that check was given [205] back to you because title had failed?

A. No, I won't say this was the only time.

Q. Had you ever told any of the Title and Trust people before?

A. I don't know whether I did or I don't know whether I didn't.

Q. You never testified to that in your deposition, did you? A. Well, I don't remember.

Mr. Strayer: I am about to get into a new subject.

Mr. Jaureguy: He testified all about that transaction when the \$25,000 check was delivered to him in his deposition.

Mr. Strayer: I think that is true, but do you contend, Mr. Jaureguy, that he ever told the story that the check was returned because the title was no good and because he had threatened to stop payment on the check? I have never heard that story until today, and I have read the deposition through.

Mr. Lindsay: I was present at the deposition, and I never heard that story.

The Court: Well, you can impeach him by his

(Testimony of Chet L. Parker.)

deposition if you want to. It is 5:15 now, and if you are going to get into a new subject perhaps we had better adjourn unless you can finish that subject in 15 minutes.

(Discussion off the record.)

The Court: We will recess until 9:15 tomorrow morning.

(Thereupon the trial of the above matter was recessed until Wednesday, January 21, 1953, at 9:15 a.m.) [206]

Wednesday, January 21, 1953, 9:15 A.M.

(Court reconvened, pursuant to adjournment.)

CHET L. PARKER

was thereupon recalled as a witness in behalf of the Plaintiff and Third-Party Plaintiff and, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

(Continued)

By Mr. Strayer:

Mr. Strayer: I wonder if we can get the original deposition of Mr. Parker.

The Court: Has the original deposition been marked as a pre-trial exhibit?

Mr. Buell: Yes, it has.

(Discussion between Court and counsel off the record.)

(Testimony of Chet L. Parker.)

Mr. Strayer: Unless there is some objection, we can go ahead with a copy, your Honor.

The Court: Yes.

Q. (By Mr. Strayer): Mr. Parker, I want to ask you some questions about the testimony which you gave on your deposition on August 7, 1952. In reading over your deposition last night, I am somewhat uncertain as to your testimony as to where you lived. I had understood yesterday that you lived in Vancouver at the time that this Winans transaction [207] took place, but if you will look on page 66 of your deposition your testimony seems to be you had lived at McMinnville at that time. Will you read over page 66 and give me, to the best of your recollection, where you did live at that time?

(Witness consults exhibit.)

A. I have read it.

Q. I think later on in another place in your deposition, Mr. Parker—I do not have the page handy, but I believe you referred to your residence then in Vancouver at that same particular time. Are you able to straighten out the discrepancy?

A. I owned a house in McMinnville and stayed down there sometimes.

Q. That was at the same time that your home was in Vancouver, but you had a house also at McMinnville; is that what you mean to say?

A. Yes.

(Testimony of Chet L. Parker.)

Q. How long had you owned that house at Mc-Minnville, or do you still own it?

A. I do not own it now. I think I owned it for two or three years.

Q. If you will refer to pages 90 and 91 of your deposition, Mr. Parker, down at the bottom of the page on page 90 and running over onto page 91, I would like to clear up, if we can, to the best of your recollection, just when this title [208] report was ordered. I note your testimony at the bottom of page 90:

“Q. Did you order the original title report before you went up on August 13th to look at the property?

“A. I don’t know when I ordered that title report. It was just a few days before I picked it up.

“Q. The events of that day are not clear enough in your mind that you can state whether or not you went in to the Title and Trust Company’s office in Hood River before you went up——

“A. No, I didn’t go in before.

“Q. Did you go in when you came back down?

“A. No, it was too late to go in.

“Q. Then is it your testimony that you didn’t go in there on Monday, August 13th?

“A. That is right.”

Now, I believe in your correction which you filed after the deposition was taken, I believe you made a correction that you had gone in there on the 13th, is that right?

Mr. Jaureguy: Yes.

(Testimony of Chet L. Parker.)

Q. (By Mr. Strayer): Apparently, at the time the deposition was taken, you were under the impression that you had not ordered a title report on August 13th, is that correct?

A. Apparently, yes. It was very hazy in my mind. [209]

Q. To what source did you go to verify the dates in order to make the correction?

A. Well I referred back to the diary and the occurrence of events and by having a half an hour, you might say, to recollect and reconstruct it as to my diary, why, I calculated it was probably on the 13th.

Q. Was there anything in the diary that indicated that it was the 13th?

A. I don't remember, but I believe so.

Q. In view of the fact that you state in your deposition that you did not go in the title company before you went up to Lost Lake and your testimony that it was too late to have done so when you came down from the lake, what is your best recollection now as to when you might have gone in the title company?

A. Well, I am still—I am sure I went in on the 13th and I believe it was in the morning of the 13th, but I am not sure about it. I am confused as to the time my wife and I went up to look at it and—on the 13th. It was a few days elapsed between the two times.

Q. All right. Now, if you will refer to page 72 and I believe also on 76 with reference to the time

(Testimony of Chet L. Parker.)

you spent up at the lake that day, I notice on page 72 your testimony:

“Q. Could you give us any estimate in hours that you were up there on the property? [210]

“A. No, I couldn't. I spent a day there, a big, long day.”

Then on page 76 with reference to the time that you returned to Hood River:

“Q. About what time of day?

“A. Well, we had an agreement made when we was to meet, but I forget. It was late evening.”

You will notice that you met your wife at the Apple Blossom Cafe, apparently, instead of at the library. Does that refresh your memory? I assume this matter was fresher in your memory at the time of the deposition than it is now. Does that refresh your memory as to the time that you arrived back in Hood River on that day?

A. No, I was to meet late evening at Mr. Stegmann's at The Dalles.

Q. Your testimony that you spent a good, long day up on the property, how does that agree with your present recollection?

A. Well, I think that was a later day when my wife and I was up there.

Q. You think now, then, that you were mistaken at the time of the deposition on the length of time that you spent on the property? [211]

A. I think I was mistaken as to the time I was thinking about when I spent a long day on the property.

(Testimony of Chet L. Parker.)

Q. Do you think now that you were mistaken in your deposition when you said that you arrived in Hood River late in the evening?

A. Yes, I didn't say I arrived at Hood River late in the evening. We had an agreement to meet.

Q. You met your wife later in the evening?

A. Why, yes.

Q. Well, didn't you meet your wife as soon as you got back to Hood River?

A. That I don't remember for sure. I think I had a correction on that, did I not?

Q. A what?

A. Didn't I have a correction on that, or did I?

Q. I do not have it.

Mr. Jaureguy: No correction on that.

Q. (By Mr. Strayer): All right. Now, if you will refer to page 21 and to 41 of the deposition with reference to your—I believe this refers to your talk with Mr. Winans on the 18th of August and particularly your testimony with reference to discussions with Paul Winans on title insurance:

“Q. But the first time this discussion of title insurance came up between you and Paul Winans was that particular evening? [212] A. Yes.

“Q. That is when you asked him to furnish title insurance?

“A. I asked him, yes, what he was going to do for the title. He told me——

“Q. And it was after that when he refused to do anything, you decided you had better do it yourself?

(Testimony of Chet L. Parker.)

“A. That is right. I told him I didn’t want an abstract on it; I would have to go buy some title insurance, then. He told me it was the Hood River office, the title insurance.

“Q. So then after that you decided to get some title insurance and to go and do it on your own?

“A. I decided to get a title report first, to see that he owned it or someone owned it that was trying to work the deal. Then I decided, after talking to the attorney, that I could purchase title insurance. Up to then I didn’t even know I could purchase title insurance.”

Q. Do you remember having given that testimony, Mr. Parker? A. Yes.

Q. Am I correct in my interpretation? Apparently, when you gave your deposition, you were then under the impression that you had not yet ordered a title report at the time that you [213] talked with Paul Winans?

A. Well, I knew I had ordered a title report. I was a little confused no doubt, between the purchaser’s policy and the title report.

Q. You did on that occasion ask Mr. Winans to furnish you with title insurance, did you?

A. Yes, and he indicated—well, he said he would give me an abstract. I told him I would rather have title insurance, and he indicated to me that if I want title insurance I would pay for it, he wouldn’t; that any of his instruments, they call for payment of any title insurance.

(Testimony of Chet L. Parker.)

Q. You were willing to pay for the title insurance? A. Well——

Q. Well, you told Winans you were?

A. Well, I was forced to then from then on.

Q. What is that?

A. If I was going to get any, he told me I would have to pay for it.

Q. Did you tell him you would pay for it?

A. Yes I believe I told him I would pay for the additional amount. He had an \$8,000 policy to turn in on it. I would pay for the additional amount.

Q. You told him you would pay additional, which meant that Mr. Winans would not be out anything for title insurance; is that it? [214]

A. That's right.

Q. Well, then, you really had no problem of getting title insurance, a title insurance policy, as long as you were willing to pay for it, did you?

A. Yes, I had a problem. I didn't even know I could get a purchaser's policy until I had it in my name.

Q. Why were you interested in a purchaser's policy?

A. Because when I buy property I like to have a good deed for it so it can be recorded, and then I can order an abstract or I have a policy of title insurance.

Q. How do you ordinarily, or how had you ordinarily handled that when you bought a piece of property and got title insurance?

(Testimony of Chet L. Parker.)

A. Ordinarily you get a deed for it and you purchase title insurance on it.

Q. Ordinarily the seller gives you title insurance, does he not? A. Not always.

Q. I did not say always, but hadn't that been your usual experience in the past?

A. Generally, it seemed like I have—they sometimes make me split the amount they pay for it. I pay a part of it.

Q. You had never before run into any problem in getting title insurance to protect yourself when you bought a piece of property, had you? [215]

A. No, but this was different in respect of an option.

Q. In what respect was the difference? You were exercising the option, were you not?

A. Yes, but then it was not a matter of record that I was an owner of any kind, and I didn't know that you could purchase a purchaser's policy of insurance before you could indicate you was the owner of the property.

Q. Were you concerned with protecting yourself during that period from August 18th until the deed was delivered? Was that the period you were interested in?

A. Well, I would like to have some title insurance, but I was not aware that I could purchase it.

Q. Was it that period that you were worried about?

A. Well I would think so. I was going to sell

(Testimony of Chet L. Parker.)

Multnomah Plywood, and they would want title insurance policy.

Q. Did Mr. Winans make any representation to you as to what title he had?

A. He had a title insurance policy on it.

Q. I know, but what did he say about the title itself?

A. Well, I don't remember. It seemed like the option, I think, called for a good deed, and I think there was a little discussion on that.

Q. You do not remember Mr. Winans making any representation as to what kind of title he had, do you?

A. Well, he had title insurance on it. I don't know what; [216] I don't know what—when you say title insurance, I don't know what you mean by title.

Q. I mean did he claim to be the owner of the property?

A. That assignment indicated to me he was the owner of the property.

Q. That was not the question, though. Did Mr. Winans make any statement to you as to who owned the property?

A. Well I think he did, but I am not real sure.

Q. What is your best recollection as to what he did say about it?

A. Well, there was a discussion concerning the title policy, who was going to pay for it and that he had—that there was a title policy now in existence on it of the total amount of \$8,000, as I remember.

(Testimony of Chet L. Parker.)

Q. Is that all you remember him saying?

A. Yes, as I remember, there was discussion about the title in which he made the statement that he was the owner of these properties.

Q. Did he make the statement that the Winans family were the owners?

A. I couldn't say definitely that he did.

Q. Did he, by any chance, tell you that there was a dispute between the Winans family and the Government as to who owned the 40 acres?

A. No.

Q. He said nothing about that? [217]

A. That's right.

The Court: What day is this you are talking about?

Mr. Strayer: I am talking about the 18th of August, your Honor.

The Court: 18th of August?

Mr. Strayer: The first meeting between the Winans and Mr. Parker.

Q. I refer you to page 60 of your deposition, Mr. Parker, and this testimony again refers to your meeting on August 18th.

“Q. Was anything said at that time by Mr. Winans about there being any question about the title?

“A. Question about the title? You mean the title not being any good?

“Q. Yes.

“A. No, nothing mentioned at that time about any title not being good. In fact, just the reverse

(Testimony of Chet L. Parker.)

was told me; that it had a very excellent title, he had title insurance, and he could get me an abstract both.”

Q. Do you recall giving that testimony?

A. Yes.

Q. Well, is that true?

A. Well, he told me he had title insurance like I have said here. [218]

Q. Did he tell you he had a very excellent title?

A. Well, he indicated to me that he had a good title and had title insurance. To me that was a good title.

Q. Did he say as you say he did here, that he had a very excellent title?

A. Well, he said the title was good on it, he had title insurance.

Q. He said the title was excellent?

A. I don't know whether he used that word or not.

Q. What did he say, to the best of your recollection?

A. Well, there was a good title on it, he had a title insurance policy and looked for it.

Q. If you will refer to page 241 of the testimony again, referring back to this matter of obtaining title insurance policy, down about the middle of the page, referring to your conversation again on the 18th, you state:

“Well I told him then I would get title insurance on it on the 18th, and then if he would only give me

(Testimony of Chet L. Parker.)

a figure I would buy the title insurance on it. I told him that."

I would like to know what you mean by the statement: "if he would only give me the figure."

A. Well, if he would give me that title insurance policy, if I knew it was for \$8,000. That is the figure I want him to give me, whether it was \$4,000, \$5,000, or eight that he [219] had, that would be the figure he would turn it in for or I would get that allowable amount on the policy if and when I purchased it.

Q. In other words, then, the conversation was something like this: He had refused to give you title insurance, but he told you that he had a policy. You said, "if you will give me the amount of that policy so I get credit for it, I will buy additional insurance."

A. I would buy a title insurance policy.

Q. And the figure you wanted was the amount of the present policy?

A. I wanted it to be shown.

Q. That is why he went to look for the old policy?

A. That's right.

Q. You were aware of the fact, then, on that date, were you, Mr. Parker, that where there was an existing insurance policy on property that you could get credit for that on a reissue basis on a new policy?

A. Yes.

Q. How had you learned that?

A. I learned that, well, I presumed that. I actually didn't know that, but when the girl pulled out the file the first time at the title company office I re-

(Testimony of Chet L. Parker.)

member seeing a policy of \$8,000, as I remember, on it.

Q. Did the girl tell you that you would be entitled to credit [220] on that \$8,000?

A. At that time I don't know whether she did or not.

Q. At any rate, you knew from your talk with the girl that there was a policy of \$8,000?

A. Well, more or less, yes.

Q. So you already had the figure?

A. Well, I had the figure, but I wanted to be sure about the figure.

Q. Were you aware, also, Mr. Parker, that under the practice of title companies, you could get that credit even though the former policy may have been with a different company?

A. No, I am not aware of that. In fact, I didn't even—I just, I didn't think so at all. I thought that was not true.

Q. You did not realize that the former policy was with a different company?

A. No, not—I don't believe so. I don't think anyone told me it was.

Q. If you will refer to page 225 of your deposition which refers to a conversation with the title company at the time that you first talked with them in Hood River—I believe this is your conversation with Miss Vose who testified yesterday—I think on the preceding page at the bottom of page 224 you will notice this question:

(Testimony of Chet L. Parker.)

“When do you first find out how much that [221] option is for?

“A. How much the option is for? When I read the option.

“Q. When you read it that evening?

“A. Well, I believe so. As I remember, I did. I think I read it that evening.”

The Court: You are not reading 224. We cannot find it.

Mr. Jauregui: It starts at the very bottom of 224.

Mr. Strayer: Last sentence on page 224.

Q. When did you first—do you find it, Mr. Parker? A. Yes.

Q. “Q. When did you first find out how much the option was for?

“A. How much the option is for? When I read the option.

“Q. When you read it that evening?

“A. Well, I believe so. As I remember, I did. I think I read it that evening.”

Now, preliminarily, Mr. Parker, let me ask you if it is not a fact that at the time the deposition was taken you were then under the impression that you had not seen the option nor learned the amount of the purchase price that Mr. Winans was asking until you saw Mr. Stegmann at [222] The Dalles that evening?

A. Well, I am doubtful about it in my deposition here.

Q. Later on, after you read the deposition, one of

(Testimony of Chet L. Parker.)

the corrections that you made was that you thought you had seen the option the day before at McMinnville when you talked with Mr. Stegmann; is that your recollection? A. As I remember, yes.

Q. Yes, all the way through until you made that correction, all the way through your deposition your impression at that time was that when you looked at the property in Hood River you did not even know what price Mr. Stegmann had in his option, and you did not know that until you arrived at The Dalles that evening; is that correct?

A. I don't know whether it was impression; just lack of memory, I would say, because I had been very doubtful about it here.

Q. That was your testimony, was it not, Mr. Parker, that you did not know that until you got to The Dalles that evening?

A. No. I was not sure about it, and I said in here, I remember I did. I think I read it that evening.

Q. All right. Let us go on:

“Q. That is the first time you found out how much Winans wanted for this property?

“A. From Mr. Stegmann, yes.” [223]

You made a correction there after the deposition was taken.

“Q. Yes.

“A. How much he is going to charge Mr. Stegmann.

“Q. Correct. That figure, however, had not en-

(Testimony of Chet L. Parker.)

tered into your calculations at all in figuring out what that property was worth?

“A. None whatsoever. I didn’t even know that it was worth \$50,000.”

Q. Do you remember giving that testimony?

A. Yes, I remember giving it.

Q. Is that correct; before you looked at the property you did not even know whether it was worth \$50,000?

A. Before I looked at the property I wouldn’t know exactly how much it was worth.

Q. All right. Now, if you will refer to page 86 of your deposition—will you refer to the bottom of page 85, the last question:

“Q. When did you first attempt to break down the value as to the timber on each of the two tracts?”

A. Pardon me?

Q. Bottom of page 85. A. Oh.

Q. Then at the top of page 86: [224]

“Sometime previous to the time that I asked for a title report on it, as I remember.”

Do you remember giving that testimony?

A. Yes.

Q. That was not correct, was it?

A. No; well, as I remember, it was—I was taking a deposition and, as I remember it at the time I took the deposition.

Mr. Lindsay: What page are you on?

Mr. Strayer: Page 86, at the top.

Q. That was in error, was it not, however, Mr. Parker? You had ordered a title report before you

(Testimony of Chet L. Parker.)

ever made any attempt to segregate the values on the two tracts? A. Yes; apparently, yes.

Q. As I understood your testimony yesterday, your explanation of why you segregated the values on the two tracts was for tax reasons in connection with a trust that you were thinking of setting up for your boy. If you will refer to page 223 of your deposition at the top of the page—I think we will have to go back to the bottom of page 222 to get the substance.

“Q. Perhaps my question wasn’t too clear. I notice in the assignment you have Lot 1, 25.88 acres, and the back 40 valued separately.

“A. Yes.” [225]

A. Pardon me. I don’t seem to find that on page 222.

Mr. Strayer: Bottom of page 222.

A. Oh, 222; I am sorry.

Q. At the top of page 223:

“Q. Why would you do that rather than just to value the entire tract?

“A. Because, as I say, of the different logging cost. One had one logging cost and the other one I couldn’t reach with the high-lead machine.”

Q. Do you remember giving that testimony?

A. Yes.

Q. Well, now, will you clarify what you are talking about? You were taking an assignment on two separate tracts of property, one 40-acre tract and one 14-acre tract, and in the assignment you went to the trouble to spell out the separate price, separate value

(Testimony of Chet L. Parker.)

on each of those two tracts. Now, what would logging costs have to do with the necessity of doing that?

A. Well, the tax purposes. Possibly we would log the back portion with the high-lead machine and could not reach the front lot. Then we would have the front lot left and then what value it would be in connection with the capital gains and all those things is what I had in mind. I could log profitably the 40 acres with a high-lead machine, and I [226] could log it across the 40-acre tract, but I could not reach down clear to the lake and across the 40-acre piece profitably, and I possibly would have that left in there. Then for capital gains and holding, and so forth, trust my son would have that, and he would want a value on it.

Q. Were you thinking in terms possibly of holding 14 acres in trust for your son and logging 40 yourself?

A. I was going to put it all in trust for the boy.

Q. Then log some of it on his behalf?

A. Yes, possibly we would log the back portion or sell the back portion or all of it.

Q. When you are talking about the back portion, are you talking about the 40-acre tract?

A. Yes.

Q. You refer to that as the back 40?

A. Well, yes.

Q. I will leave that subject for a moment. Will you give the witness Exhibit 49. That is your income tax return for 1951, is it not, Mr. Parker?

(Testimony of Chet L. Parker.)

A. Yes.

Q. Who prepared your income tax return?

A. I think it was Mr. Rich at Salem, Oregon.

Q. He is an accountant, Lawrence Rich?

A. Yes.

Q. Does he do your accounting work? [227]

A. Most of the time, yes.

Q. Pardon? A. Most of the time.

Q. Well, now, what information did you furnish to Mr. Rich in making out your income tax return?

A. Well, I didn't furnish him any. I think my wife furnished him the information.

Q. What did she furnish him?

A. That I don't know, what she furnished him. She takes care of all the tax business.

Q. Who furnished him with the explanation of the loss claimed on this Lost Lake property?

A. I think possibly she did.

Q. You have no recollection of talking to Mr. Rich about it yourself? A. Oh, I might have.

Q. Do you remember whether you did?

A. I don't remember whether I did or didn't.

Q. I call your attention to this language in your income tax return, and this is on the sheet relating to the loss on the lake property. Do you have that page before you?

A. "Loss on Worthlessness of Property, 1951."

Q. Referring to the last sentence in the third paragraph: "For the purpose of title insurance the taxpayers estimated valuation of the two tracts as follows: 40 A tract—72 per [228] cent of Total Cost,

(Testimony of Chet L. Parker.)

14 A tract—28 per cent of Total Cost,” now, is that intended to imply that the separate values were placed on these tracts for the purpose of title insurance? A. I didn’t write the letter.

Q. You do not know what it means?

A. I don’t know what intent the writer had specifically in saying that or not saying it.

Q. Did you tell Mr. Rich that a separate valuation of the two tracts was done for the purpose of getting title insurance?

A. No, I don’t think so.

Q. I will refer you to page 93 of your deposition, referring to the reason why you had Mr. Stegmann exercise the option rather than doing so yourself. Do you find the place, Mr. Parker? A. Yes.

“Q. What reason was there for him to make the second payment?

“A. I had a reason for that. I wanted him to complete it up to that point, to the amount of \$5,000 paid.

“Q. Why?

“A. Before I took over. I thought it was more businesslike.

“Q. In what respect did you think it was more businesslike? [229]

“A. Well, it seemed to be the place for me to cut it off, for me to take over and for him to quit.”

Q. Do you remember giving that testimony?

A. Yes

Q. How does that reconcile with your testimony

(Testimony of Chet L. Parker.)

yesterday that you thought that the option was not assignable?

A. Well, that is where he would cut it off, and from then on it would be okeh.

Q. Is that what you meant to imply in your testimony here, that it was more businesslike to do it the way you did?

A. Well, yes; otherwise, I was a little perturbed about the assignability of that assignment—or option, rather.

Q. If you will look over on page 222 of your deposition, and this testimony, I believe, relates to the conversation with your wife the day that the deed was delivered finally executed. I believe you testified yesterday that you thought your wife had brought a draft of the deed and you had gone over it with her. I refer you to your testimony about the middle of page 122.

A. Pardon me. As I remember my testimony yesterday, that she had brought home some notes referring to reserved area or something.

Q. Well, I understood you to testify—pardon me. You [230] cannot answer what I understood; but didn't you testify yesterday that your wife brought home the draft of the deed, and you looked it over?

A. Well, I think I was a little doubtful about that.

Q. At any rate, I will call your attention to your testimony on page 122:

(Testimony of Chet L. Parker.)

“Q. Did you ever see any draft of the deed before the deed was actually delivered?

“A. No. I never did see any draft of the deed before it was delivered, before it was delivered to me or before my wife finally gave it to me.”

Q. Does that conform to your present recollection?

A. As I remember, a complete draft, the whole thing, and as was finally given to us, I don't remember of seeing the draft.

Q. Do you remember seeing a partial draft?

A. Well, I don't remember one way or the other.

Q. What.

A. I don't remember one way or the other.

Q. If you will refer to page 96 of your deposition, and this relates again back to the meeting that you testified to on August 18th with Mr. Stegmann and Mr. Winans, about two-thirds of the way down the page on 96 is this testimony:

“Q. When you went up to the Winans place there did [231] you expect to see Stegmann up there, also?

“A. Not right then, no. I expected that he would have been there that day.

“Q. Why?

“A. Because that was the day the thing was to be signed.”

Q. Do you recall giving that testimony?

A. Yes.

Q. Well, then, you did not have any pre-arranged meeting with Winans and Stegmann?

(Testimony of Chet L. Parker.)

A. I think I did have.

Q. You testified yesterday, did you not, that you had an agreement with Mr. Stegmann that you would go with him to make the \$4,000 payment?

A. I would go with him?

Q. That you would go with him, yes.

A. I don't remember making a statement that I would actually go with him.

Q. Doesn't your diary say, Mr. Parker, that under the heading of August 17th: "Seen W. Stegmann and he wants me to go with him to pay Winans so I will know they are paid the other \$4,000. I said I would."

Didn't you testify yesterday that that was correct? [232]

A. I actually didn't go with him. He was there, and I.

Q. Let us not quibble about whether you went in the same car or not. I am merely trying to find out, didn't you testify yesterday that you agreed that you would meet at Mr. Winans' place after?

A. As I remember my testimony yesterday, we had previously agreed that we would—that that day would be the day of the signing of this thing, and Stegmann completing his arrangements with it, and that I would be up there sometime that day.

Q. On the 18th of August? A. Yes.

Q. That agreement was made on the 17th of August?

A. Well, I don't remember exactly when it was made.

Q. Your diary says it was on the 17th.

(Testimony of Chet L. Parker.)

A. Well, I presume the diary is pretty correct.

Q. You would assume your diary is correct. Well, then, your testimony in your deposition: "Didn't you expect to see Stegmann up there, also"? Answer: "Not right then," and your subsequent testimony that you expected that he would have been there because that was the last day, the day that thing was to be signed, was not entirely accurate, was it?

A. Well, yes—I didn't—he could have signed the thing and left the check and would leave before I got there. He [233] could have.

Q. If you will refer to page 57 of your deposition—let me ask you first. Your testimony yesterday, as I recall, was that you did not think that you talked with Mr. Winans concerning this meeting before you went up; am I correct on that?

A. Pardon?

Q. Did you testify yesterday that you did not believe you had any telephone conversation with Mr. Winans before you went up there?

A. Well, I am not sure whether I did or not. I am thinking maybe I did.

Q. I will refer you to your testimony on page 57. Will you read that over and then state whether, according to your best recollection, you did have a telephone conversation with Mr. Winans before you went up on the 18th of August.

(Witness consults deposition.)

A. What was the question again, please?

(Testimony of Chet L. Parker.)

Q. My question is now, is it your best recollection that you did talk with Mr. Winans on the telephone before you went up there on August 18th?

A. Well, it is purely from memory, and I think I did.

Q. That was your testimony on the deposition also, was it not? [234]

A. Well, it is strictly memory here. I left it a little loose.

Q. I will refer you, then, to page 58.

Mr. Jaureguy: Pardon me. I think we could appropriately—if I may point out here—that he later corrected that part of the deposition, made a change on that.

Mr. Strayer: Well, you made the change after the deposition. What I am not sure, if I recall, Winans or he made the——

Mr. Jaureguy: That is the only correction?

The Witness: Yes.

Q. (By Mr. Strayer): I am not referring now to whether you called him or whether he called you, but your best recollection is that you called him on the phone, is that right?

A. As I remember, yes.

Q. Page 58 of your testimony:

“Q. When you talked to Mr. Winans on the phone, what did you tell him?

“A. I don't remember the exact words. I told him that I was involved in that deal; that I was going to take it over and Stegmann was going to pay him the \$4,000, and I was going to take the deal over.

(Testimony of Chet L. Parker.)

I was going to come up there late in the afternoon, as I remember telling him, and I was going to see that Stegmann turned over—gave him the \$4,000 check, [235] and that he distinctly understood that from then on he was dealing only with me.

“Q. You told him that on the telephone?

“A. Yes, because he was curious.”

Q. Do you remember giving that testimony?

A. Yes.

Q. So that before you ever saw Mr. Winans on August 18th you had already told him by phone that you were buying the property from Stegmann or had bought it and that he was going to be dealing with you from then on, is that right?

A. Well, he would be dealing with me, yes; I made that statement.

Q. You told him that? A. Yes.

Q. What do you mean when you say, “because he was curious”?

A. Well, I suppose he wanted to know when to cut it off or when to go on or what the deal was.

Q. What is that?

A. I suppose he wanted to know when to cut it off or what the deal was.

Q. When you would cut it off? A. Yes.

Q. You mean the cut-off between you and Stegmann? A. Well, yes. [236]

Q. Did he appear to be surprised to learn that you had taken the option over?

A. I don't know whether he was surprised or not.

Q. How do you know that he was curious?

(Testimony of Chet L. Parker.)

A. Well, he just acted curious.

Q. What did he say that makes you think he was curious?

A. I don't remember distinctly what he said, but I remember him.

Q. Did he ask you any questions?

A. Well, possibly so, but I remember him being curious.

Q. Do you remember what he asked?

A. No.

The Court: Yesterday, in response to a question of mine, didn't you testify that you felt free to discuss the matter with Mr. Winans after the \$4,000 had been paid because you thought that the deal was set at that time, and that prior to that time you were concerned because you did not know whether the option was assignable? Is it your testimony now that you called Mr. Winans before the \$4,000 was paid and told him that he should deal with you?

The Witness: Yes.

The Court: So you want to correct your testimony as of yesterday?

Mr. Jaureguy: The testimony was that he would deal with him after the \$4,000 was paid. [237]

The Court: I think we will take a recess.

(Recess.)

Q. (By Mr. Strayer): Mr. Parker, let us go back to this \$25,000 check that was under discussion yesterday when you were on the witness stand. In

(Testimony of Chet L. Parker.)

order to get the continuity here, as I recall, your testimony was that you asked for the check back on or shortly before September 20th; told Mr. Stegmann that if he did not return it that you would stop payment on the check. Your testimony was that he then returned the check to you, and you deposited it in the bank on the 20th.

Was there any discussion with Mr. Stegmann about the application of the proceeds of that check on any of your loans?

A. Yes; he didn't—he said that is the only way he would return it to me, on this \$22,000 loan that I made to him on November, 1950. It was not due yet.

Q. Let's see if I understand you. On the 20th or within a day or two before that, whenever you had your discussion with him, you demanded the check back, and he told you he would give it back if you would apply it on the note? A. Yes.

Q. At that time, as I recall, you were complaining that you had apparently received a bum title, and that was the [238] reason you were demanding the check back?

A. That is the reason I gave him.

Q. Was there another reason?

A. Well, I said yesterday that I heard that the Sheriff was down there checking on some of his funds, and I would like to have that loan paid back.

Q. Do I understand you to mean to testify now, then, that the reason that you asked for the check back was because you were worried about that loan?

A. I was a little perturbed about the Sheriff

(Testimony of Chet L. Parker.)

being down there. I told him however, that I would—that there was something wrong with the title, apparently. I didn't know how bad it was, or good, but I used that advantage to get the check back.

Q. You did not tell him that the Sheriff was down inquiring at the bank?

A. I don't remember whether I told him or not. I could have.

Q. Your real reason for asking for it back was that you had heard that the Sheriff was down at the bank?

A. Yes, I wanted that paid back on that loan.

Q. And the fact that the title was bad had nothing to do with your asking for the check back?

A. I don't know. I didn't know whether the title was bad or good. I had heard that there was a defect in it. [239]

Q. Did that knowledge that you had of the defect, did that have anything to do with your asking for the check back?

A. The principal reason I asked for the check back was because I wanted that money back from the loan.

Q. Was there any other reason?

A. Well, that was the main reason.

Q. Was there any other reason?

A. Well, if I didn't get it back he would cash it.

Q. Was there any other reason in addition to your concern about the loan for asking for the check back?

A. No.

Q. Then the fact that there was a defect in title

(Testimony of Chet L. Parker.)

or that you had heard that there was a defect in title had nothing whatever to do with your asking for the check back?

A. No, that gave me the advantage I needed to get it back.

Q. What?

A. No, I said that gave me an advantage I needed to get it back, I said.

Q. But that had nothing to do in your thinking in asking for it back? A. No.

Q. And right at that very time? A. No.

Q. Stegmann then told you that he would not give it back unless you applied it on the loan? [240]

A. Yes, that's right.

Q. That was a condition that he attached in returning the check to you? A. Yes.

Q. Mr. Parker, I want to refer you to Page 216 of your deposition, at the bottom of Page 215, the last line on Page 215:

"Q. You turned this check over to him, you say, the evening of Monday, August 13th; is that correct? A. Yes.

"Q. Nothing was said about the money he owed you at that time?

"A. Well, I wouldn't say nothing was mentioned about it. Not that I remember anything specifically.

"Q. That none of his notes or accounts to you were then due and owing?

"A. I don't think a one of them was. Maybe some interest that should be paid, as I remember."

(Testimony of Chet L. Parker.)

Do you remember giving that testimony?

A. Yes.

Q. All right. Now, first, as to the date at the top of Page 216, August 13th, that is a wrong date, as I understood— [241] no, I beg your pardon, that is the correct date. That is the date that you gave the check to him, isn't it? That is what it says.

A. Yes.

Q. How about your testimony at that time that you do not remember any discussion with Mr. Stegmann about the money that he owed to you?

A. I don't remember making any discussion on the 13th.

Mr. Jaureguy: It is my understanding, your Honor, that the purpose of reading these depositions is to show some prior inconsistent statements, and the testimony that he has been telling about is about something that took place several days later.

Mr. Strayer: No, this testimony in the deposition relates to a conversation at the time the check was returned to Mr. Parker.

Mr. Jaureguy: No, the deposition does not. That deposition refers to the time that the check was given from Mr. Parker to Mr. Stegmann.

Mr. Strayer: I think probably you are right. I think I am in error.

The Witness: Yes, the check was returned some five weeks later.

Mr. Jaureguy: About five weeks.

Mr. Strayer: I think I am in error, your Honor. I [242] misinterpreted the testimony.

Q. You had heard at the bank that the Sheriff

(Testimony of Chet L. Parker.)

was looking for money belonging to Stegmann shortly before the 20th when you got the check back. Was that the first information you had that the Sheriff might be looking for money or property belonging to Mr. Stegmann?

A. I think that was the only time I ever heard of it.

Q. You had never heard before that anyone was trying to collect money from Mr. Stegmann?

A. Well, I might have heard someone was collecting money from Mr. Stegmann, but that was the first time I heard that the Sheriff was trying to collect any money from Mr. Stegmann.

Q. You knew Mr. Stegmann was in financial difficulties, didn't you?

A. Yes; as to the extent I didn't know exactly.

Q. Well, you knew that when you gave him the \$25,000 check, did you not?

A. Well, I suspicioned it.

Q. What is that? A. I suspicioned it.

Q. It was more than a suspicion, wasn't it, Mr. Parker?

A. Well, it wasn't absolute by any means.

Q. When you gave him that check on August 13th did you expect him to cash the check? [243]

A. Yes, I thought he would cash it.

Q. Did you expect him to put the money in his own bank account?

A. I didn't expect him—I would expect him to do whatever he wanted to do with the money.

(Testimony of Chet L. Parker.)

Q. What was your thinking? Did you think that he was going to cash it and take the money in cash or that he was going to open a bank account?

A. Well, I presumed he would, but I didn't know what he would do. He didn't tell me whether he would cash it or what he would do with the check.

Q. You were not concerned at that time about your \$22,000 note? A. Pardon me?

Q. You were not concerned at that time about whether you were ever going to collect that \$22,000, were you?

A. Well, it wasn't due, and I was quite sure that I would get the \$22,000.

Q. You were not worried about that a bit?

A. No.

Q. You didn't discuss with Mr. Stegmann at that time canceling his \$22,000 note instead of giving him the cash payment?

A. No—that is on August 13th are you referring to?

Q. Yes. [244]

A. That's true. I did not discuss it with him.

Q. It didn't even occur to you to discuss that with him? A. No, it wasn't due yet.

Q. Were you surprised as the days went by and you learned from the bank that the check had not been cashed?

A. Well, I made an inquiry at the bank.

Q. That is what you said yesterday, that you did, but were you surprised when you found that the check had not come in?

(Testimony of Chet L. Parker.)

A. Yes, I was surprised.

Q. When was that inquiry, incidentally, how long——

A. I don't remember when the inquiry was.

Q. Was it fairly soon after you gave the check?

A. No, it was later on.

Q. Why did you make that inquiry?

A. As I remember, my wife didn't notice it coming in, and I am not sure whether I made the inquiry. Maybe she made it.

Q. Well, now, referring to—may I take this apart?

Mr. Jaureguy: Yes.

Q. (By Mr. Strayer): Referring to these two checks of August 14, 1951, for \$25,000, and the check of September 12, 1951, for \$382—I believe we had better have this marked as an exhibit.

(Check No. 1138, August 14, 1951, in the amount of \$25,000, was thereupon marked Plaintiff's Exhibit 40-A for Identification.) [245]

(Check No. 1193, of 9-12-51, \$382, was thereupon marked Plaintiff's Exhibit 41-A for Identification.)

Mr. Strayer: May the record also show that both of the checks, 40-A and 41-A, are also pre-trial exhibits attached to the deposition of Mr. Parker and that some pre-trial—deposition exhibit is 74——

Mr. Strayer: No. 74 is a pre-trial exhibit number of several documents attached together including these two checks.

Q. Your testimony is, Mr. Parker, that these

(Testimony of Chet L. Parker.)

checks were made out and delivered to Mr. Stegmann on the date of the checks, the respective dates?

A. Yes. However, I didn't make out the August 14, 1951, check. I can refer to the 9-12-51, because I made that one out.

Q. Yes, your testimony was that the August 13th or 14th, whatever that is, check for \$25,000 was made out and signed by your wife; is that correct?

A. Yes.

Q. But it was made on the date that the check was dated, you say?

A. Well, I am even confused about the date, but it looks like the 14th.

Q. Let us put it this way: It was made out and delivered [246] at the time that the option was assigned to you?

A. Yes, I am sure of that.

Q. That was over at The Dalles. The check of \$382, dated September 12, 1951, where was that made out and delivered?

A. Well, I don't know where it was made out. I don't remember where it was made out at, and I don't know whether it was handed to him or mailed to him.

Q. You do not know, then, whether it was made out in The Dalles or whether it was after you went home to Vancouver?

A. No, I don't remember.

Q. What does your diary indicate on that?

(Testimony of Chet L. Parker.)

A. It does not make any mention of it in my diary.

Q. Look under September 10, 1951, in your diary, Mr. Parker, next to the last paragraph.

A. It indicates that I—the diary indicates that I delivered him this check on the—or I paid him on the 10th.

Q. It also indicates that you were at The Dalles at that time, does it not? A. At Dufur.

Q. At Dufur, that is over the other side of The Dalles? A. It makes mention here at Dufur.

Q. Yes; now, what kind of a checkbook did you use, Mr. Parker, what kind of checkbook did these checks come out of?

A. These checks came out of a large bank book that the bank sold us or gave us. [247]

Q. Is that one of those large books with three checks on each page?

A. As I remember, it is three checks, or four, on each page.

Q. Is that what you call a payroll checkbook, or did you have a name for it?

A. No, I think I just tore out some checks when I wanted to take them with me, or I just used those checks.

Q. You did not have the checkbook itself with you then over there at The Dalles?

A. I might have, and maybe I didn't have.

Q. Wouldn't that have been a little unusual to carry a big checkbook along like that?

A. No, it would not be usual or unusual, either

(Testimony of Chet L. Parker.)

one. We do have it sometimes. Sometimes we do not. Sometimes I tear them out, put them in my billfold. I think I have two or three now in my billfold.

Q. Do you remember whether you had your checkbook with you at the time that you were over there at The Dalles when these two checks were given? A. Goodness no. I certainly do not.

Q. It was your practice to tear some of the checks out of your big checkbook and carry them along with you in your pocket?

A. I do that all the time.

Q. As far as you know, it may be that these blanks had been [248] torn out; you just took them out, made them out there at The Dalles, and delivered them; is that right? A. Very possible.

Q. You say that that was a frequent practice of yours to do that? A. Yes, it still is.

Q. What is the significance of the serial numbers on these checks? Are they numbered consecutively from the top of the book down to the bottom?

A. Well, I don't order the numbers, and I just—when I need three checks I just reach in and tear out three checks. Numbers mean nothing to me. The only number that means anything to me is the amount of money that I fill in that I know I have got to pay to someone. The number of the checks running in unison, whatever you might say, means nothing to me.

Q. My question is: Are the checks numbered consecutively starting at the top and going down to the bottom of the book? A. I think they are.

(Testimony of Chet L. Parker.)

Q. You say that numbers mean nothing to you. When you tear out checks, do you tear them from any particular part of the book?

A. I generally take whatever a full page would be, fold it up, put it in my billfold.

Q. Do you pull that off the top or bottom?

A. Well, sometimes my wife has already written one or two on the same sheet. I just tear them off the same thing, take [249] a whole page with me.

Q. From what part of the book do you tear out a page?

A. Any place I happen to come across.

Q. You just open the book and tear out a page?

A. That's right, if there is nothing on the blank. I don't think numbers mean anything. It seems like we have been operating that way for years. The numbers don't change much, approximately the same numbers.

Q. Am I correct, then, in my understanding of your testimony that if we were to look over your checks, we will say for the year 1951, we would expect to find no rhyme or reason to the dates as compared to the serial numbers?

A. Oh, no; no, you would not find, as far as the ones I write, you wouldn't find anything that even resembled a systematic system.

Q. We would find a good many instances, then, you think, where you might have torn a check out the middle of the book and made it out, and the

(Testimony of Chet L. Parker.)

serial number would not correspond with the dates on either side of it?

A. I want to correct you in that respect. When we write a check in the book itself we write them each one in sequence, but when I tear them out I just grab the book, tear out a page out of it, fold them up, put it in my billfold.

Q. You say that is a frequent occurrence?

A. Oh, yes; I have them in my billfold now, I believe. That [250] is very common.

Q. Do you have any explanation of the fact, or don't you know what the explanation is of the fact that the check for \$382 does not appear to have been cashed until—look at the date on it—I believe it was in December, 1951; is it not?

A. December what, pardon me?

Q. Look on the \$382 check which you have before you. Doesn't the stamp indicate that was cashed sometime in December?

A. I don't know how you tell.

Q. The puncture marks on it. A. Oh.

Q. Can you tell the date?

A. Oh, it is 12-31-51, I believe.

Q. December 31, 1951?

A. Yes, I believe that is what it means.

Q. Pardon me.

A. It looks like that's what it is.

Q. Do you have any idea why the check was not presented until that late date?

A. No, it was out of my care, custody and control.

(Testimony of Chet L. Parker.)

Q. Was it called to your attention either by your own examination of your books, with or by Mrs. Parker, that that check had not come in?

A. I never paid too much attention to these smaller, what [251] I call the smaller checks. The larger ones we keep our eye on some.

Q. It never occurred to you then, to ask Mr. Stegmann to give the \$382 check back?

A. No.

Q. Or to stop payment?

A. No, that never occurred to me.

Q. You say that the agreement was with Mr. Stegmann that you would apply this \$25,000 check on the \$22,000 note. That \$22,000 note was made on November 20, 1950?

A. Oh, I don't know the date, but I know it was in November, 1950.

(Discussion off the record.)

Mr. Jaureguy: I want to say for the record that 75 is an envelope with a lot of exhibits in it.

Mr. Strayer: May we have this one marked as 35-A, and may the record show that 35-A was taken from the Exhibit 75, the envelope?

The Court: I do not think that is necessary.

(Document, Note dated November 20, 1950, together with typewritten agreement, November 20, 1950, was thereupon marked Plaintiff's Exhibit 35-A for Identification.)

(Testimony of Chet L. Parker.)

Mr. Strayer: I think this should be attached as part [252] of the same exhibit, your Honor.

The Court: Very well. Is that 75-B?

Mr. Strayer: No, that would still be 35-A. It came from the same envelope.

The Court: Clip it together.

Q. (By Mr. Strayer): I would like to have you examine Exhibit 35-A, which consists of a note in the sum of \$22,000, dated November 20, 1950, and another document purporting to be a mortgage accompanying it. Are those the instruments that were executed by Mr. Stegmann on November 20, 1950?

A. No.

Q. What are they?

A. That mortgage and the note here I have.

Q. Were they signed by Mr. Stegmann on November 20, 1950? A. Yes.

Q. The note is for \$22,000, payable at 4 per cent interest payable in one year; is that correct?

A. Yes.

Q. The mortgage covers one converted Willamette yarder and one Austin Western road grader, is that correct?

A. Together with rigging and other equipment attached, and so on.

Q. Now, I wish you would explain to the Court, if you will, the background of that loan and just what occurred?

A. Well, Mr. Stegmann didn't make those out. My wife made [253] these out, and this was a cash loan that we made to Mr. Stegmann.

(Testimony of Chet L. Parker.)

The Court: What do you mean, a cash loan?

The Witness: Currency, cash currency.

The Court: You gave him \$22,000?

The Witness: Yes, on November 20th, 1950.

Q. (By Mr. Strayer): How did that loan come about? Had he asked for a loan?

A. Yes, he had asked for a loan.

Q. What were your discussions about it?

A. Well, I told him we had some money that we would loan him.

Q. Did he ask for a loan of money first?

A. Well, yes, I didn't—he asked me to borrow money.

Q. I want to get all the circumstances, Mr. Parker. He must have told you what he wanted the money for, how much he wanted, just what he would like to do, and you must have given him some answer. Just give us as nearly as you can just what the discussion was.

A. It has been a long time ago—as I remember—the reason I remember the loan is because it was in currency, and we wanted—my wife wanted to make a little interest on it instead of laying around in the bank.

The Court: I did not hear that last remark.

The Witness: My wife wanted to make some interest on it [254] rather than having that laying around in the bank. I remember having that discussion with my wife.

Q. (By Mr. Strayer): Do you remember Mr.

(Testimony of Chet L. Parker.)

Stegmann saying what he wanted to do with the money?

A. As I remember he was in an operation of some kind, logging, or doing something at that time. I don't remember. We discussed logging, aspects of this and that and other pieces of property, and he was going—it seemed like he was going to purchase some property up out of McMinnvile.

Q. What kind of property, timber property?

A. Yes, timber property.

Q. Was the price of that to be \$22,000?

A. No, not all of it. He wanted to purchase that piece of property and another one and to do his logging, too.

Q. What properties was he going to purchase? Let us talk about them for a moment.

A. Well, he didn't describe the properties to me. I didn't expect him to. After all, I was in the business of logging, too. If I knew where they was at I might go out and buy them.

Q. He didn't tell you the names of the owners?

A. No.

Q. But he did tell you there were two pieces of timber he wanted to buy; is that right?

A. Yes, he mentioned specifically two [255] pieces.

Q. What else did he tell you he needed money for?

A. Well, there was quite a substantial amount of it.

Q. How much of it?

(Testimony of Chet L. Parker.)

A. Well, I don't remember exactly, but I think it was within two or three thousand dollars of all of it.

Q. What was he going to do with the additional money, then?

A. Well, he was going to do with his equipment, fixing it up, taking care of it.

Q. Doing what?

A. Fixing his equipment up and taking care of it and so forth. He said \$22,000 was all the money he would need.

Q. Did you understand he was going to log that timber himself?

A. Well, it was not clear to me that he was going to buy it for logging or for resale, but I understood him to say—or it was in my mind that he was going to log it.

Q. How much did he owe you at that time, Mr. Parker?

A. I don't know. I would have to look at the rest of the papers we have on it.

Q. Will you give us an estimate?

A. I would not be able to give you an estimate.

Q. Did you have some mortgages on his equipment at that time?

A. I don't believe so—well, I had this mortgage on his equipment. [256]

Q. No, I mean before this mortgage was signed on November 20th, did you have some mortgages on some of his stuff?

A. I don't remember. I could have. They were

(Testimony of Chet L. Parker.)

very, they were nominal, I think, that he owed at that time.

Q. Did you have a mortgage on his house at that time?

A. I could have. I am not sure about that.

Q. You had sold him a house in McMinnville in 1949, was it or 1950?

A. I don't remember which year it was, but I sold him a house in McMinnville.

Q. You took a mortgage on it when you sold it, did you? A. No, I did not.

Q. You took a mortgage later on, then?

A. Yes, as I remember, later on.

Q. You don't know whether that mortgage was given before or after the November 20th note?

A. No, I don't remember. It is all a matter of record here. We have it.

Q. Yes, we will get to that a little bit later. All right. Let's go back to the \$22,000 note. He was going to buy two pieces of timber which took up all of it except two or three thousand dollars, and you understood that that two or three thousand was to be used for fixing his logging equipment up for the logging?

A. Or do some logging, yes; or do the logging with it, whatever [257] he was going to do with it.

Q. Your testimony is that you had some money in currency that was not working, and you wanted to put it to work? A. That is right.

Q. Where was that money kept?

(Testimony of Chet L. Parker.)

A. In a safe deposit box in the First National Bank of McMinnville, Oregon.

Q. How long had you been keeping that amount of currency in a safety deposit box?

A. Quite considerable. Well, ever since I think we had the box there.

Q. How long had you had a box?

A. Well, I don't remember.

Q. Well, about how long?

A. Oh, possibly a year or so.

Q. I believe, and I could be in error on this, but I believe in your deposition page 189, I believe you fixed the date on that. You placed the opening of the safety deposit box at the time that you moved to McMinnville, and you said you moved to McMinnville about in 1948. Was that about the time, do you recall?

A. Well, my testimony is the same as it was then.

Q. Yes, I am not implying that there is any difference. I am asking you whether in 1948 would be about the time that you opened the safety deposit box? [258]

A. Well, I don't remember. I didn't open it myself. My wife did. I wouldn't remember exactly.

Q. How long had you been in the practice of keeping large amounts of currency in a safety deposit box?

A. What are you referring to, large amounts?

Q. Well, \$22,000.

A. Well, I had had more than that in there, so I figured that would be——

(Testimony of Chet L. Parker.)

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A. What are you referring to, large amounts?

Q. Well, \$22,000.

A. Well, I had had more than that in there, so I figured that would be——

(Testimony of Chet L. Parker.)

Q. How much did you have in there on November 20, 1950?

A. I believe probably around \$32,000, possibly. I am not sure of the exact amount.

Q. Well, now, after you made this loan arrangement with Mr. Stegmann, then what did you do, go up and take out that \$22,000 in currency out of the box?

A. My wife took care of it. I think she got it out beforehand.

Q. Oh, before November 20th?

A. Oh, yes; yes, she got it out of the safety deposit box before this time.

Q. How long before?

A. I don't know. I remember keeping it upstairs. She was quite worried about it. She has got a jewel drawer in her—I don't know what you call them, commode, or something, and she kept it in there.

Q. You mean she had one of these little chamber boxes to [259] keep her jewelry in that she kept the money in? A. Yes.

Q. It had a lock on it?

A. Well, it was in a commode, whatever you call it, had a secret lock, I remember. You reached in behind and snapped a button, and out come the drawer.

Q. How long before November 20th did you take the money out of the safety deposit box?

A. I didn't take it out; my wife did.

Q. How long before November 20th?

(Testimony of Chet L. Parker.)

A. I don't know how long before, but I would guess a couple, three weeks.

Q. Did she take out just \$22,000, or did she take more out?

A. Well, she was supposed to take out \$22,000. I presume she just took that much out.

Q. How does it happen that she just happened to take out the same amount that you loaned to Walter Stegmann several weeks later?

A. We discussed this previously.

Q. Oh, you had been talking with Mr. Stegmann for some little time about the loan, had you?

A. Well, a couple, three weeks at least.

Q. So, on November 20th then, you made that deal. Who typed up that mortgage?

A. My wife did. [260]

Q. Did you dictate it or tell her what to put in it?

A. No, she knows more about that than I do. I didn't tell her what to put in it, other than the equipment. I might have told her to put that in.

Q. Am I correct in my impression here that your wife got that money from a safety deposit box so that she would have it on hand to give to Mr. Stegmann when you closed your deal?

A. Yes.

Q. It was gotten for that specific purpose?

A. Yes.

Q. You had it around the house for two or three weeks until you completed the deal?

A. That's right.

Q. During that two or three weeks while you

(Testimony of Chet L. Parker.)

were discussing it with Mr. Stegmann, what was the reason for that delay?

A. Well, I don't remember the delay. I remember my wife being a little perturbed about it, about the money being there.

Q. Did that delay by any chance have something to do with your satisfying yourself that it was a safe loan to make?

A. No, I figured he was a good bet.

Q. You never had any doubt about that?

A. No, because in all my experience with loggers and timbermen I had never been beat out of a penny, and lots of times thousands of dollars had been involved where there wasn't a [261] scratch of a pen; many, many times.

Q. Was there any particular reason why you were going to give Mr. Stegmann cash rather than a check?

A. Well, it was put in there for a cash emergency fund. We have it in there now the same—in case the bank goes broke, why, we know where it is at.

The Court: In case what?

The Witness: In case the bank goes broke we know where the money is at.

Mr. Strayer: Does your Honor have the question?

The Court: No, I didn't hear.

Q. (By Mr. Strayer): Well, I understand that part of it, Mr. Parker, I think, but my question is was there any particular reason why you had to run

(Testimony of Chet L. Parker.)

the risk of keeping that money around your home for two or three weeks rather than depositing it in the bank and then giving Mr. Stegmann a check?

A. No, she could have taken it back, but she didn't. I think she thought that Stegmann would show up to complete this deal, and he didn't show up, as I remember, until on November 20th, 1950, to complete the deal.

Q. There was not any reason that you knew of, then, why you gave him cash instead of a check?

A. Yes; yes there was a definite reason why we gave him cash. [262]

Q. What was it?

A. Well, the cash was laying down there, and my wife wanted some interest on it.

Q. It never occurred to you that you could deposit the cash in your account, then give Mr. Stegmann a check?

A. Well, she didn't want to confuse her book-keeping. The cash we had in there we had been paying income tax on it, and all of it is parceled here by where we got it from, and the way she keeps her books on these checks with the current expense for them, and this other was a separate savings that we had, and we didn't have a separate savings account at the bank other than this cash money, which we have at this time, a cash fund there for savings.

Q. You wanted to get this money out working for you?

A. That is what she had in mind.

Q. Mr. Stegmann thought he could pay this loan off in about a year, did he?

(Testimony of Chet L. Parker.)

A. Yes, or sooner.

Q. He expected to make enough money out of this timber work to pay back the loan within a year with interest?

A. That was the plan he outlined to me.

Q. Did you figure 4 per cent would be a handsome return on that money?

A. Well, he would not hold still for any more.

Q. What is that?

A. He would not hold still for any more. [263]

Q. Did you try to get more?

A. Yes, I certainly did.

Q. What interest did you want?

A. I wanted 8 per cent.

Q. You bargained back and forth and got down to 4 per cent?

A. Yes, he said that loans like that you could get it for 4 per cent.

Q. Was there any particular reason why you did not record your mortgage, Mr. Parker?

A. Well, we never did record many mortgages.

Q. You recorded the mortgage on the home, didn't you?

A. Yes. Well, wait, I think we did. I am not sure.

Q. You never followed the practice of recording mortgages?

A. Oh, my, no. I would say ten per cent of the mortgages we have had have been recorded. The

(Testimony of Chet L. Parker.)

others have not. I am not saying ten per cent exactly, but thereabouts.

Q. What effort did you make to find out about Mr. Stegmann's financial stability at the time you made that loan?

A. Well, Mr. Otto Heider, I did mention to Mr. Otto Heider something about Mr. Stegmann.

Q. What did he tell you?

A. Well, he told me he was slow but good.

Q. What did he tell you about his property and resources?

A. Well, as I remember, Mr. Heider told me that he had loaned him money, large sums, and that he was slow but good. [264]

Q. What did he tell you about security?

A. Well I didn't ask him about the security.

Q. You did not ask him what property Stegmann had and what his assets were or what his liabilities were?

A. No, I didn't. I was not—I would not have expected his answer if I would have.

Q. Did Mr. Heider tell you at that very time that he had mortgages on some of Stegmann's property in rather substantial amounts?

A. Well, he indicated that he had had substantial amounts. He did not name a definite figure, but I gathered it was very typical of this loan.

Q. You gathered that they had been paid off, and he didn't owe Mr. Heider anything at that time?

A. Well, he might have owed Mr. Heider, but a

(Testimony of Chet L. Parker.)

lot of it had been paid off. It was, as I gathered, in good shape.

Q. Did you go to the County records to check on what mortgage indebtedness there could be against him?

A. No, I would not even know where to go if I did go there to find out.

Q. Did you know that Mr. Stegmann owed a good many people money? Did you have any information on that at all?

A. What do you mean by a good many, lots and lots of people?

Q. Oh, yes.

A. No, I didn't know that he owed, I never—other than [265] his labor or some of those people owed over on 30-day accounts or something like that. I knew he was in business.

Q. You did not know he had any real bills that amounted to anything?

A. No real large ones.

Q. What do you call real large ones?

A. Oh, ten or fifteen thousand dollars.

Q. What is that?

A. Ten or fifteen thousand dollars.

Q. Did you know of any accounts that he had not paid in connection with any of his previous logging activities?

A. At this time?

Q. Yes.

A. No; no definite that I can remember that I knew that he——

Q. Don't you recall one in particular, Mr. Parker, that you had known about down there at

(Testimony of Chet L. Parker.)

the Willamina Garage, a bill of something like \$4000 for repairs on logging equipment? Did you know about that bill?

A. Well, I did not know that there was a bill at the garage. I didn't know anything about the particulars or anything on it.

Q. What did you know about it?

A. Well, I don't—as I remember now, I don't think I knew much of anything about it.

Q. You did know, Mr. Parker, didn't you, that the garage [266] was holding a truck down there as security for that bill, and you went and hired Otto Heider to replevy the truck; you knew that, didn't you? A. No, because I didn't do that.

Q. Didn't you bring a replevin suit to recover the truck from the garage?

A. Not that I remember.

Q. You never authorized Mr. Heider to bring a suit on that?

A. No, I never paid him any money, and I would presume he would want to be paid if I hired him.

Q. I think we had better get the details on that truck. I will pass that for the moment and let Mr. Buell get me the information.

This equipment that you took on this mortgage, this Williamette yarder and this Austin Western road grader, have you ever seen this equipment?

A. Yes, sir.

Q. Where and when?

(Testimony of Chet L. Parker.)

A. Oh, several times I saw it.

Q. Well, when?

A. Well, I can't rememer exactly the day I saw this equipment.

Q. All right, approximately?

A. Well, I would say previous to this, the time this note and mortgage was made out I probably saw it 30 days before that. [267]

Q. Where was it when you saw it?

A. Well, the yarder, as I remember, was up in Tillamook Burn.

Q. Whereabouts in the Burn?

A. Well, up above Bear Creek.

Q. Bear Creek? A. Bear Creek.

Q. On what operation?

A. Well, I presume it was his own. I don't know.

Q. How did it happen you saw it up there?

A. I own timberlands up in that country.

Q. Was he logging in some of that timber at the time?

A. Well, I think this yarder was logging some timber.

Q. In your timber?

A. No, no; it had nothing to do with my timber.

Q. In what timber was it logging?

A. Well, I don't know who owned the timber.

Q. Well, who had the logging show?

A. Well, Mr. Stegmann was supposed to own the yarder.

Q. Was he conducting the logging show?

(Testimony of Chet L. Parker.)

A. I presume he was, yes.

Q. Did he tell you he was?

A. Yes, he described where it was, and I told him I remembered going by the yarder. [268]

Q. Did he tell you that that was his logging show up there?

A. He told me the lumber belonged to him.

Q. You have not answered my question. My question is, did he tell you that that was his logging show up there?

A. He didn't tell me it was his logging show in the sense that he owned it.

Q. You saw a yarder working there at some previous time when you were up there?

A. Yes, I saw a yarder up there.

Q. So when you got to talking to him about security you remembered you had seen that yarder up there working?

A. Yes.

Q. And you said, "Yes, that is the yarder I want mortgaged"; is that right?

A. Yes.

Q. How about the road grader? When had you seen that?

A. Oh, I had seen it, oh, many times at various places.

Q. Well, when and where?

A. Well, I don't know exactly the date when, but I remember where several times.

Q. Well, where, then?

A. Well, I had seen it on some Willamina lumber jobs.

(Testimony of Chet L. Parker.)

Q. You mean jobs that Stegmann was doing for Willamina Lumber?

A. Well, I don't know that he was doing it for them, but it was his—this equipment was on—he was around the jobs. [269] I don't know what arrangements exactly he had with Willamina Lumber.

Q. What jobs were they, Mr. Parker?

A. Well, up Gopher Valley was one, I think.

Q. He was using this grader on a Gopher Valley job?

A. Well, it was sitting on the road there. I presume he was using it.

Q. How long before November 20, 1950, did you see a grader?

A. I would say very recently before then.

Q. How long before?

A. Oh, 30, 60 days from there.

Q. That was long after the Gopher Valley job had been completed, was it not?

A. Well, possibly it was. Which Gopher Valley job are you referring to when you say it was completed?

Q. Well, it is your wording. What do you mean by the Gopher Valley job?

A. Well, I don't know whether he has ever completed it or not. I am referring to jobs for Willamina Lumber Company, and he had some logging equipment in various places; Gopher Valley and

(Testimony of Chet L. Parker.)

up above Willamina toward his ranch and various places.

Q. Where did you see the grader 30 to 60 days before this note was signed?

A. As I remember, it was Gopher Valley.

Q. Sitting alongside the road? [270]

A. As I remember, yes.

Q. And he told you that that was the grader that he was mortgaging to you? A. Yes.

Q. Did you make any check to find out whether he really owns that equipment?

A. Well, I believe he did. I sold it to him.

Q. You sold the equipment to him?

A. I sold him the grader.

Q. When was that?

A. Oh, I don't know; a year or two before that.

Q. A year or two before that? A. Yes.

Q. How much did you sell the grader for?

A. Well, it seems like—I am not sure how much I got out of it.

Q. Oh, about how much?

A. Well, it had to do—he was going to build a little road into some logs he was to load out for Willamina Lumber, but it had something to do with that road-building there, too.

Q. It had nothing to do with Gopher Valley?

A. No, no; it was separate from that.

Q. How much did he pay for that grader, then?

A. I don't know how much he paid for the grader. [271]

Q. Can't you give any estimate of it?

(Testimony of Chet L. Parker.)

A. Well, it was combined in this road agreement.

Q. Do you know whether there was a mortgage on the grader at the time of this transaction?

A. No, I don't know whether there was or wasn't. He said it was free and clear, so I presume they were.

Q. Do you know what became of the grader?

A. No, I do not.

Q. Have you ever seen it since?

A. Yes, I saw it later.

Q. When?

A. Well, a month or two later, if I remember.

Q. When was the last time you saw it?

A. I don't know when the last time was I saw it.

Q. How about the other piece of equipment, the yarder? When did you last see it?

A. Well, there was a snow came on that spring, I think was the last time I saw it.

Q. The spring of '51?

A. Well, in the winter of '50-'51.

Q. That is the last time you saw it. Do you know what became of it?

A. No; no, I do not.

Q. Well, now, going back to that claim of the Willamina Garage, is it your testimony that you did not file an action [272] against Marlow T. Ellis of the Willamina Garage on August 23, 1950, to replevy a truck and trailer?

A. Who was the attorney for that?

Q. Well, Mr. Heider was your attorney, I believe.

(Testimony of Chet L. Parker.)

A. Well, I do not remember hiring Mr. Heider.

Q. Well, let us leave Mr. Heider out of it, then.

Regardless of who your attorney may have been, it was your testimony that you did not file such an action?

A. Well, I don't remember of doing it.

Q. Did you have a mortgage or some kind of a claim to the title to a White truck and a Walker trailer, Motor No. 140A16663, about that time?

A. Did I have a title to it?

Q. Well, either title or mortgage on it?

A. I didn't have a mortgage on it, I don't think.

Q. Can you take your income tax returns and from your deposition schedules tell whether you owned that truck at that time?

A. I have owned a White truck, but I don't know if that is the right motor number. I only owned one, and I presume that was the one.

Q. When did you own that one, Mr. Parker?

A. Well, I still own it.

Q. Was Mr. Stegmann using that White truck in 1949 and 1950?

A. Well, he could have in 1949. I don't [273] know.

Q. Was he using it on the Gopher Valley job in 1952? A. Well, I don't think so.

Q. Do you remember letting him use it?

A. When I owned it?

Q. Yes.

A. No, I never remember letting him use it when I owned it.

(Testimony of Chet L. Parker.)

Q. When did you acquire it?

A. I don't remember. I can look on my title and tell.

Q. Did you get it from Mr. Stegmann?

A. No.

Q. Well, then, you say that he may have used it. I do not understand that you have ever let him use it.

A. He may have used it previous to the time I got it.

Q. Before you got it?

A. Yes, might have been his. I don't know.

Q. When you made this \$22,000 loan did you have any understanding with Mr. Stegmann that the profit that he hoped to make from using that money would be applied to pay the note back?

A. Well, not only the profit, but I just expected that money back. I wasn't concerned with his business.

Q. It was my understanding he was going to buy some timber, and he hoped to make some money out of it.

A. Well, he would have made money in the original investment [274] at that. If he sold the timber, I wanted the money. I was not concerned with his profit. I wanted the principal back.

Q. Did you expect him to pay that back when he made the sales?

A. I expected him to pay me back.

Q. But not before a year?

(Testimony of Chet L. Parker.)

A. Well, I expected it by the time this thing came due. I expected every——

Q. You had no discussion with him, though, that as soon as he sold the timber he was to apply the profit to pay the note?

A. He may have indicated that to me, but I never insisted on it. I don't know whether he did or didn't, but he might have.

Q. Well, now, your giving him the money in cash, is it your testimony that that had nothing whatever to do with the fact that Stegmann at that time was broke and his creditors were on his doorstep?

A. You are telling me that he was broke, he had creditors on his doorstep? I am supposed to answer that?

Mr. Ryan: I object to that question, your Honor. There have been several times that this reference has been made, an assumption.

The Court: I will sustain the objection. Ask him in a little different form. You cannot assume facts that did not come out in the evidence. [275]

Q. (By Mr. Strayer): Your giving him the money in cash rather than by check or some other means had nothing to do with any information that you had about his financial situation?

A. It had nothing to do with it whatsoever.

Q. Did you know that he did not have a bank account at that time?

A. I didn't know whether he did or whether he did not.

(Testimony of Chet L. Parker.)

Q. What is this \$1,500 that was added onto this mortgage, \$1,500 loan, apparently made by Mrs. Parker on April 20, 1951? What do you know about that?

A. Well, I remember I was gone, and my wife made him a loan.

Q. What do you know about it?

A. Well, I don't—I don't know too much about it.

Q. Well, tell us what you do know about it.

A. Well, I remember coming home and that she had made an additional loan of \$1,500. She had a deal she had made some profit on, some deal, as I remember, and she felt that she could do with it as she pleased without asking me.

Q. Is that all that you know about it?

A. Well, I remember that because we had a little argument about it why she would loan him \$1,500 in my absence. I remember her telling me, "Well, it was my deal, and I just took half of the profit I made on the deal. I figured [276] your half you could keep, and my half I would loan Mr. Stegmann." I remember that.

Q. What was that deal, by the way?

A. I don't remember. I think it was a timber deal she had.

Q. Was it, by any chance, that Wrist transaction?

A. I believe it was.

Q. As a matter of fact, you learned of that Wrist timber deal from Mr. Stegmann, didn't you?

A. Yes.

(Testimony of Chet L. Parker.)

Q. He had an option on the deal——

A. Did I learn it from Mr. Stegmann?

Q. Yes.

A. No, I think my wife learned about it from Mr. Stegmann.

Q. Learned about the fact that he had a verbal option on the Wrist timber?

A. I don't know what he had. My wife would have to answer that, but that he knew about it, anyway.

Q. Well, you paid him some money for what interest he had in the timber, didn't you?

A. Well, she probably paid. I don't know whether she did or not. She might have paid him a finder's fee. I think she paid him a finder's fee.

Q. What is a finder's fee?

A. Well, that is quite a common practice. If a broker or someone finds some saw logs, some trees, why, you pay him [277] a finder's fee. It is quite common practice.

Q. Do you know how much she paid?

A. No; I think it was \$50.

Q. Is that the customary finder's fee?

A. Well, I always—there was always two prices, the one they want and the one they will take. The price, I think that was the price he would take.

Q. Your recollection is that she was so happy over making a profit on that transaction that she loaned half of the profit to Mr. Stegmann?

A. I think we had an argument about it when I came back, and she said, "Well, this half is my

(Testimony of Chet L. Parker.)

own, and you can take your half, and I have already loaned my half of the profit to Mr. Stegmann. You have got your half, so you should not be worrying about it." I remember her saying that.

Q. Was there any discussion, do you know, about what that \$1,500 was for?

A. No, I don't remember.

Q. Nobody, neither Mrs. Parker nor Mr. Stegmann, told you what the loan would be for?

A. Oh, they possibly did, but I was more perturbed about her loaning in my absence than anything else.

Q. By that time were you a little bit disturbed that the \$22,000 had all been spent and that Mr. Stegmann needed \$1,500 more? [278]

A. No; no, I was never perturbed about—I was not worried about getting the loan back, if that is the answer to your question.

Q. You never were worried about that?

A. No. Well, only I wanted that check to apply on the loan.

The Court: I did not hear that.

The Witness: I wanted the check to apply on the loan when I found out that the Sheriff had been down to the bank.

Q. (By Mr. Strayer): That is the first time you ever began to get worried?

A. Well, I was beginning to get worried then.

Q. Well, now, Mr. Stegmann borrowed that \$1,500 on April 20, 1951. Then it appears that the next thing he did was enter into this credit arrange-

(Testimony of Chet L. Parker.)

ment on May 1, 1951, only about ten days later.

Was there any connection between those two?

A. I don't think so.

Q. Tell us what conversation with Mr. Stegmann preceded that arrangement on May 1, 1951.

A. As I remember, he said that he did not care to pay interest on money, just borrow money and pay interest on it. He had heard of this arrangement that whereas he would be allowed a fund to write checks on, and he would pay interest, and we were figuring the interest as to the actual money he used, and when he paid it back, why, it would be figured out of it.

Q. Did you say he had heard of this [279] arrangement?

A. As I remember, he mentioned he had heard of this arrangement previously.

Q. That is, he had heard that that could be done?

A. Yes, it was more or less of a proposition.

Q. How much money did he say he would need in the way of credit?

A. It would not be over \$10,000.

Q. What did he need that credit for?

A. He was going to deal in timber, as I remember.

Q. Did you take the precaution of inquiring about what had been done with the \$22,000, how that had been invested?

A. Well, he indicated, as I remember, that he had purchased some land up in Pea Vine, other places.

(Testimony of Chet L. Parker.)

Q. Did he say he had purchased some land on Pea Vine, and what other place?

A. Well, he told me the other places, but I don't remember the names.

Q. He gave you a list of them, you mean?

A. No, he didn't give me a list of them, just casual conversation.

Q. But he accounted for how he had spent \$22,000?

A. Well, tentatively, in a broad sense of the word.

Q. Did he tell you what he had done with the \$1,500?

A. Not that I remember. I think he had a specific place for it, or my wife probably would not have loaned it to him, [280] but I am not sure about that. She loaned the money; I didn't.

Q. Who thought of this interest arrangement whereby he was to write checks both on his own account, but those checks were to be charged to your account?

A. Well, I didn't understand it to be to his account. It would my account, and I would pass on them. It was more or less his idea. He had heard about it somewhere.

Q. He thought up the whole thing?

A. Well, he heard about it. He asked me if I would be willing to do such a thing. I told him, "Yes."

Q. You told him that was okeh?

(Testimony of Chet L. Parker.)

A. Well, I thought about it a little bit. It sounded all right.

Q. Did you go down and talk to the bank about it? A. I don't believe I did.

Q. Did you ever talk to anyone in the bank about that arrangement?

A. I told them when a check would be written Mr. Stegmann would notify me, and I would notify the bank to pass the check.

Q. But you never had any formal understanding with them about how that would be handled?

A. I don't believe that I did.

Q. As I understand it, your arrangement was that when [281] Mr. Stegmann would make out a check to anybody he would make out a personal check of his own, sign his name to it; he would then call you on the phone and say, "I have to deliver a check from so-and-so in such-and-such an amount payable to so-and-so. Would you please call the bank and say, 'Honor that check' "; is that what happened?

A. That is right. Then I would call them, or else, of course, my wife or I.

Q. I would assume if you had a rather tight situation on time, you had to go practically with each other in a hurry before the check reached the bank or it might bounce?

A. Well, I wasn't perturbed about it.

Q. Well, it is not a question of whether you were perturbed. I mean, you did have to go and

(Testimony of Chet L. Parker.)

check fairly soon after the check was delivered, did you not, in order for that always to work?

A. That was his problem, not mine.

Q. What I say is true, though, isn't it, Mr. Parker?

A. Well, sometimes it seemed like he wrote a check that did, would go by. I am not sure about that because I remember the bank holding one for a day or two.

Q. The bank would not pay one of those checks without your passing it, would it?

A. No, because they had one or two down there, as I remember, that they were holding, so they certainly would not pay it [282] without my——

Q. Which checks were those, do you remember?

A. I don't remember specifically.

Q. When did that happen?

A. I don't know when that happened exactly.

Q. Let's get the original notes.

May we have these marked, your Honor, as Exhibit 36-A, which has been taken from the Parker deposition, Exhibit 4.

Mr. Jaureguy: Taken out of the envelope marked Exhibit 75.

(Documents, Agreement dated May 1, 1951, and Note of May 1, 1951, were thereupon marked Plaintiff's Exhibit 36-A for Identification.)

Q. (By Mr. Strayer): Exhibit 36-A which you have in your hand is a promissory note for \$10,000

(Testimony of Chet L. Parker.)

and the mortgage which were signed by Mr. Stegmann on May 1, 1951, are they not? A. Yes.

Q. Who prepared that mortgage?

A. Well, this agreement here, yes, she gave it, my wife prepared that.

Q. Was that in a conference with you, Mr. Stegmann and Mrs. Parker, all three of you together, when that was typed [283] up?

A. As I remember, yes, I was in complete agreement with it.

Q. What discussion did you have on what security he might have to secure this note?

A. Well, he had this equipment here and then plus a note.

Q. You asked him what security he had for the note, did you?

A. Well, I asked that for the note. I wasn't perturbed too much about security for the note. The note itself was security.

Q. You were perturbed enough so that you went to the trouble to make out the mortgage, were you not?

A. Yes, and that agreement, these two items, also.

Q. You were sufficiently concerned so that you fixed up an agreement of some property as security for that note, is that right? A. Yes.

Q. Then you must have discussed with Mr. Stegmann what property he had to use as security?

A. Well, he said he had these—he gave those for security, and I took them.

(Testimony of Chet L. Parker.)

Q. And the equipment that he put up was two Carco towing winches and one 'dozer blade?

A. Yes.

Q. What did you know about that [284] equipment?

A. Well, as I remember, these were up to his ranch, or his ranch or their ranch, whatever ranch it was.

Q. Did Mr. Stegmann have a ranch?

A. I don't know whether he had it or his folks had the ranch.

Q. Had you seen this equipment before this arrangement was signed? A. Yes, I had seen it.

Q. How long before?

A. Oh, probably a month or two before.

Q. You considered that as adequate security for the note, did you? A. I felt it was all right.

Q. About the \$10,000——

A. It would crowd \$10,000.

Q. What is that?

A. It would crowd \$10,000. I figured the note itself was security, and whatever assets he would have, why, then, I could—the note would put a claim on it over and above what I had noted in this agreement.

Q. Well, there again, did you inquire whether he had any additional security that might be a little more satisfactory?

A. Well, it was common knowledge that he had stuff all over the country, everywhere, lines and rigging and stuff, scattered all over the country. It was very common knowledge. [285]

(Testimony of Chet L. Parker.)

Q. Was it also common knowledge that that equipment was mortgaged up to the tune of eighty or ninety thousand dollars?

A. Well, it was not to my knowledge that it was mortgaged to any eighty or ninety thousand dollars.

Q. You say that you never troubled to check at the County Courthouse to find out just what mortgages there were of record down there?

A. No, no; I would not even know where to check at the County Courthouse to find out, if I wanted to.

Q. Was there any reason why that agreement or mortgage, or whatever it is, why that was not recorded?

A. Well, I just never recorded any very nominal amount of instruments.

Q. Did you know on that date, on May 1, 1950, that Mr. Stegmann was in financial distress?

A. What do you mean by that, financial distress, he was broke?

Q. Well, did you know that he was in any trouble at all financially?

A. Well, being a logger, they are generally always in trouble financially.

Q. Did you know that he owed bills that he could not pay?

A. Well, if he had any bills, he should have been able to pay them. [286]

Q. He should have plenty of money, you mean?

A. Well, I would think so.

Q. You thought that he was in good financial condition?

(Testimony of Chet L. Parker.)

A. I thought he was good enough to run this agreement. I certainly didn't consider him broke by any means.

Q. Did you know at that time whether he had a bank account there at McMinnville?

A. No, I didn't know whether he did or didn't. He used to bank at Sheridan, as I remember.

Q. He also used to bank at McMinnville, didn't he?

A. I don't know that he ever banked at Mack.

Q. Didn't he bank there during the Gopher Valley transaction?

A. I don't think he did. I don't know whether he did or didn't. I didn't ask him. I don't think he ever told me.

Q. Didn't you ever discuss with him the idea on this loan arrangement that you could arrange with the bank to transfer funds from your account over to Mr. Stegmann's account and in that way honor checks on his account?

A. No; this proposition was given to me, and it sounded all right to me.

Q. It never occurred to you that you might be misleading somebody by having checks going through there honored by the bank and signed by Stegmann, that you might mislead them into a belief that he was a person of financial stability?

A. No, there certainly was no deceit as far as I was concerned [287] in making this arrangement, or my wife, with anyone.

(Testimony of Chet L. Parker.)

Q. You knew, did you not, that when one of those checks went through and came back and the check was honored that whoever had one of those checks was going to have an impression that Mr. Stegmann had an account in that bank?

A. Well, I had never gave it much thought one way or the other.

Q. Well, now, will you look over this exhibit, Mr. Parker, and tell me what advances were made pursuant to that arrangement? Are there some notations on there from which you can tell us?

A. Well, it says, "3 checks, \$2,850, in by May 14; interest \$150," showing a total of \$3,000. "Credit, \$2,300 balance of check to \$22,000." Then there is a credit of \$140, "Interest on \$22,000."

Q. Are those your checks or Mrs. Parker's?

A. No, they are Mrs. Parker's.

Q. Do you know what the meaning of those endorsements is? Can you reconstruct it from that?

A. Well, it looks like he paid her some interest, and he paid her \$3,000 back.

Q. Well, do you recall what the three checks were? A. No, I don't recall.

Q. Well, then, let me hand you—I will hand you Exhibits 38-A and 39-A and direct your attention first to Exhibit [288] 39-A. I think these are also in the pre-trial exhibits. I hand you 39-A first, Mr. Parker. Will you look those over and say, if you can, whether the checks are the three checks referred to on the endorsement on the back of the note?

(Testimony of Chet L. Parker.)

A. Well, it might be. It figures out the same. On May 14th; these checks are dated May 14th.

Q. Do you know what those checks were for?

A. Well, I know now what they were for.

Q. Well, didn't you know then that he was buying the Johnson property?

A. No, I didn't know specifically—I thought I knew what they were for all right.

Q. Did not Mr. Stegmann tell you that he had bought a piece of timber from Mrs. Johnson and that he had made out a check in that connection for \$2,500 to Mrs. Arthur Johnson and to please notify the bank to honor the check?

A. He said he was buying timber up in the Rex Hill area, and he told me the number of the check. I remember distinctly that the number was very important, and the name, of course.

Q. Why did he say that the number was very important?

A. Well, the number to him was important, apparently, because he gave me the number. He says, "I am going to issue a certain numbered check," and gave me the name, and that is what I, in turn, gave the bank to honor against this agreement [289] for it.

Q. All three of these checks were honored against the agreement, were they not? A. Yes.

Q. And attached to these three checks is a memorandum slip dated May 21, 1951, addressed to you, apparently: "Chet: Enclosed find all three checks drawn by Walter Stegmann," and signed by Mr.

(Testimony of Chet L. Parker.)

Gunness, is that? A. Mr. Gunness, yes.

Q. It looks like Gunness, G-u-n-n-e-s-s. Is there a Mr. Gunness at the bank?

A. Yes, I think there is Tom Gunness there at the bank.

Q. Then a footnote: "I have canceled these checks." That came to you from the bank with these three checks, did it?

A. I think maybe he handed it to me. I can't think back, anyway.

Q. Well, then, in addition to that—will you hand the witness Exhibit 38-A. These are photo-stats, are they not, of the two checks that were given to the Winans in payment of \$1,000 down payment on the option, and the \$4,000 payment on August 17; is that right?

A. Yes, it appears that way.

Q. Both of those checks were also carried on this loan arrangement, were they? A. Yes. [290]

Q. Now, as of May 14, the endorsements on the note indicate that there was due \$2,850 on the payment to Mrs. David and Mrs. Arthur Johnson for \$150 interest, or a total of \$3,000. Do you know when that was paid back?

A. No, I do not, but it says, "Credit of \$2,300, Interest \$140," and I see that the note was canceled.

Q. Canceled on September 20, 1951, was it not?

A. Yes.

Q. Which was the date that you gave the \$25,000 check back; is that right?

A. Yes, it says, "All checks paid in full to date."

(Testimony of Chet L. Parker.)

Q. The endorsement also indicates that they paid \$26.25 interest when the check—when the note was canceled, was it not? Is there not an endorsement?

A. Yes.

Q. Now, you have no information on when that original advance in May of 1951 was paid?

A. No.

Q. Whether it was paid before September 20th or not you don't know?

A. I don't know whether it was or was not, but I think it was.

Q. What bank account did you have there at the McMinnville Bank, Mr. Parker? Did you have more than one bank account? A. Yes. [291]

Q. In what names were the accounts carried?

A. Well, Chet or Lois Parker and Phillips Construction Company.

Q. What was Phillips Construction Company?

A. Oh, it was a company I was going to form for construction purposes.

Q. Was that company owned solely by you?

A. Yes.

Q. So Phillips Construction Company was an assumed business name that you used sometimes, is that right?

A. A very short time, never actually used it, only—never actually used it. I was going to use it. We set up this fund to go ahead and form the company.

Q. How did you write checks on the Phillips

(Testimony of Chet L. Parker.)

Construction Company account? How did you sign them?

A. I just signed them like I signed any of the rest of them.

Q. Just "Chet L. Parker"? A. Yes.

Q. Or your wife could sign on that account, could she, by just signing "Lois Parker"?

A. Yes, I think she could sign on that, too.

Q. Well, now, how could the bank return that check, to which account when the check would be presented?

A. Well, I really don't know. I suppose if I ran out of money on the one they would use it out of the other one. [292]

Q. How does it happen in this particular case that all of the—I think I am correct in this, am I not—that all of these advances on this loan arrangement were charged to your Phillips Construction Company account.

A. Well, of course, you are telling me something that is news to me.

Q. You do not know that?

A. I don't know anything about it.

Q. Well, I could be in error on it.

(Discussion off the record.)

Q. I think I may be in error on May, but I will hand you the bank statement from the First National Bank of McMinnville for the month of August, 1951, which is marked Exhibit 42. Does that appear to be a photostatic copy of your bank

(Testimony of Chet L. Parker.)

statement for the month of August on Phillips Construction Company account?

A. Well, it says from August 9th to August 27th.

Q. Yes. Now, will you look on there and tell me if it is not true that the thousand-dollar check to Winans and the four-thousand dollar check to Winans and also the \$95,000 check to Winans for which a cashier's check was purchased are all charged to your Phillips Construction Company account?

A. Well, I don't seem to find the \$95,000 here.

Q. Look on the second page.

A. Oh, I am sorry. This is in September, the next page. [293]

Q. Is the next page in September? I thought it was the last of August.

A. Well, maybe so; I don't know.

Mr. Jaureguy: No.

The Witness: But I see a \$95,000 one here on September 10, 1951.

Q. (By Mr. Strayer): Well, now, state, if you can, if it is not true that all three of those withdrawals were charged to the Phillips Construction Company account?

A. Well, it indicates so on this thing.

Q. Do you know how that happened that you used that account on this Winans transaction?

A. No, I don't know how they would use either account other than I issued the check on them, and they would naturally have to have their money.

Q. Look on the front page of that statement

(Testimony of Chet L. Parker.)

again, and I will ask you if it is not a fact that on August 9, 1951, you transferred from your personal account to the Phillips Construction Company account \$100,000?

A. Both of these were personal accounts.

Q. All right. Well, let us not talk about the terminology. Let us forget about that. Is it not a fact that you transferred \$100,000 on August 9th from your account held in your name and Mrs. Parker's to an account held in the name of Phillips Construction Company? [294]

A. Yes.

Q. What was the reason for that transfer?

A. I suppose we ran short of money in that account.

Q. What was the balance at the time that that \$100,000 was transferred?

A. I don't know.

Q. Let me call your attention to the fact, Mr. Parker, that you had no money at all in the Phillips Construction Company account until that transfer was made. Look at the top of your statement and see if that is not correct?

A. Well, I don't know how it would indicate that.

Q. What was your balance on August 9th after the deposit was made, according to the statement?

A. I don't know what it was. It does not say.

Q. What does the statement say you had on deposit in the bank on August 9, 1951?

A. It does not say.

Q. I assume that you are familiar with bank statements, Mr. Parker?

(Testimony of Chet L. Parker.)

A. I very seldom look at them.

Q. Does not this right-hand column over here, does not that indicate the balance that you have on deposit on the dates indicated?

A. Well, if it does, why, August 9, 1951, I had a hundred thousand dollars. [295]

Q. Yes. Now, how long had it been since that account had been active before August 9th?

A. I don't know, but from the time it was active it has continued active, I think, up until—maybe it still is. I don't know.

Q. Is it your recollection that that was an active account during the month of July, 1951, we will say? A. Yes, I think it was active.

Q. It just happened that you checked that amount out, and the bank then had it transferred, \$100,000, to make it an active account?

A. I don't know. My wife took care of all that. I just can't say.

Q. Did that transfer of \$100,000, by any chance, have anything to do with this Winans transaction?

A. No, no; the Phillips Construction hundred thousand dollars, as far as I am concerned, didn't have anything to do with Winans whatsoever.

Q. Let me call your attention to your testimony in your deposition, on page 161. Do you still have the deposition there? Page 160, at the bottom.

“Q. I notice that Exhibit 15, which is the two statements of your personal account, shows a withdrawal of \$100,000 on August 9th and the deposit

(Testimony of Chet L. Parker.)

of \$100,000 in the Phillips Construction [296] Company account on the same date. Was there any particular reason for that transfer?

“A. I don’t know. I don’t recollect. My wife took care of all of that. I suppose so the other one would have some money.

“Q. Was that withdrawal made in contemplation of this Winans timber purchase?

“A. Possibly.”

Did you give that testimony? A. Yes.

Q. Is it true that possibly the transfer had something to do with this Winans transaction?

A. Well, it is possible that she wanted it to be drawn against the Phillips Construction Company instead of the Chet L. Parker account.

Q. Is it possible that you knew about this pending Winans deal on August 9th?

A. Well, I don’t see how I could have known about it August 9th.

Q. Pardon?

A. I don’t think I should have known anything about it August 9th. I don’t know which August 9th we are talking about, 1951; is that right?

Q. That is right. Do you remember having a conversation [297] with Mr. Rich, your accountant in Salem, also on August 9th? A. No.

Q. You have no recollection at all?

A. No.

Q. Why would you have called Mr. Rich at Salem on that date?

A. I don’t know why I would or I don’t know why I wouldn’t.

(Testimony of Chet L. Parker.)

Q. For what purposes did you make calls to Mr. Rich?

A. Income tax and advice on this and that.

Q. Did you look to Mr. Rich for advice on tax matters rather than to an attorney?

A. Rather than to an attorney?

Q. Yes.

A. Well, somewhat, yes, but not advisement.

Q. Had you by any chance called Mr. Rich on August 9th in order to ask about the tax aspects of this trust arrangement to your son?

A. I don't know whether I did or not.

Q. Did you discuss this Winans transaction with him on August 9th?

A. I don't know whether I called him on August 9th, so I wouldn't know whether——

Q. Let us get the material on that. Exhibit 57, these are all in one Exhibit, Exhibit 57.

Mr. Buell: I believe perhaps this would be a good time to straighten the record on these two calls. The telephone [298] records of the West Coast Telephone Company of McMinnville over numbers 4984 and 4982 were all marked as Exhibit 57. I have since separated the toll slips into each one, A and B. We will make 57-A the toll calls on No. 4982 and 57-B the toll calls on No. 4984.

Q. (By Mr. Strayer): Referring, then, to 57-B, toll calls from——

The Court: I think you had better have them marked.

(Testimony of Chet L. Parker.)

(Group of toll slips of West Coast Telephone Company for No. 4982 was thereupon marked Plaintiff's Exhibit 57-A for Identification.)

(Group of toll slips of West Coast Telephone Company for No. 4984 was thereupon marked Plaintiff's Exhibit 57-B for Identification.)

The Court: It is 12:00 o'clock. It seems to me you are going to get into a new subject matter. Recess until 2:00 o'clock this afternoon.

(Noon recess was thereupon taken.) [299]

Afternoon Session

(Court reconvened at 2:00 o'clock p.m., pursuant to adjournment, and further proceedings herein were had as follows:)

CHET L. PARKER

thereupon resumed the stand as a witness in behalf of the Plaintiff and Third-Party Plaintiff and was examined and testified further as follows:

Direct Examination

(Continued)

By Mr. Strayer:

Q. Mr. Parker, you have told us this morning that you had a home down at McMinnville or you owned a home there while you actually made your residence in Vancouver at the time of this Winans

(Testimony of Chet L. Parker.)

transaction. Was your home in McMinnville rented to anybody?

A. I don't remember whether it was or wasn't.

Q. Were you staying at your home that you owned down there in the month of August, 1951, when you were down at McMinnville?

A. Well, we would stay there once in a while.

Q. Pardon?

A. We would stay there once in a while.

Q. Did you stay in your home at a time when it was rented?

A. I don't remember staying, sleeping, in the home when it was rented.

Q. Did you at some time or other in 1951 rent the home [300] there?

A. I am not sure we did.

Q. Have you ever rented your home?

A. Pardon me?

Q. Did you ever rent the home?

A. Yes, I think we rented it once. We had two homes there—I don't know which—I mean, there is two dwelling buildings on the property. Are you referring to both of them or just one of them?

Q. I didn't know that you had two. You owned two different houses in McMinnville?

A. Yes, there was two on the same property; there was two houses.

Q. Did you rent them both at any time?

A. We had at various times, we had it rented. Sometimes we lived in one; sometimes we would

(Testimony of Chet L. Parker.)

live in the other one temporarily, all night or a day or two.

Q. You kept them both furnished, did you?

A. I think so; partially, let us say, with no stove in it.

Q. Did you have a telephone at both of the houses or in either of them?

A. I think so. We had a phone at one of them, I know. I don't know whether we had one at the other one or not.

Q. Well, do you have any way of telling where you stayed when you were down in McMinnville during the month of August, [301] 1951?

A. All of August, 1951?

Q. Yes.

A. Well, apparently I didn't stay at McMinnville all of August, 1951.

Q. I did not say you did. At any time you were in McMinnville do you have any record of where you stayed or any way of determining?

A. Other than reading my notes here.

Q. Well, do you have some notes that might refresh your memory on that? I don't recall anything in the portion of your diary that we referred to that makes any mention of where you stayed at night in McMinnville. If there is, I would like you to refer to it.

A. Well, on 8/27/51.

Q. Pardon?

A. On the 8th month, 27th day, of 1951 I say, "Completed the deal of buying Floyd out today at

(Testimony of Chet L. Parker.)

Marsh & Marsh, McMinnville. Then drove to The Dalles."

Q. Well, is there any indication at what house you stayed in at McMinnville that day?

A. No.

Q. Do you have any record of where you stayed on August 9th when you were at McMinnville?

Mr. Jaureguy: I think Mr. Parker is looking at some of [302] the diary of the August 9th portion of the diary. It is not in evidence or in the courtroom.

Q. You do not have that with you?

(Discussion off the record.)

Q. (By Mr. Strayer): Your wife informs me the diary indicates you stayed at Grand Ronde on the night of the 8th but no indication of where you stayed August 9th. Her information indicates that you probably stayed at Grand Ronde on the night of the 8th but no indication of where you stayed on August 9th. I take it, then, you have no way of fixing where you may have stayed on August 9th?

A. No, I certainly can't remember.

Q. Did you ever stay with your brother, Oscar Parker, down there? A. Yes, sometimes.

Q. Is it possible that you might have stayed with your brother, Oscar Parker, on August 9th?

A. It is possible, yes. I don't remember of the occasion.

Q. I beg your pardon?

(Testimony of Chet L. Parker.)

A. I just don't remember that August 9, 1951, that I stayed at my brother's house that night.

Q. Of course, I am talking about August 9th because I am interested in this telephone call to Mr. Rich on August 9th which the Exhibit indicates—and I think you and your lawer have seen the Exhibit—indicates a call from Oscar [303] Parker's number in McMinnville to Lawrence Rich at Salem on August 9th. Now, is it possible you may have placed that call from your brother's phone?

A. Yes, it is very possible.

Q. I do not know whether you have seen that particular slip or not. I will ask the Crier to hand it to you. This is part of Exhibit 57-A, the top slip, Mr. Parker.

I am correct, am I not, in stating that it appears to be a memorandum of a call from your brother's home in McMinnville to Mr. Rich on August 9th, 1951? A. Yes.

Q. Did you have any other loan arrangements with Mr. Stegmann other than the ones that we have talked about here? A. I believe so.

Q. Before you tell us about them, perhaps we had better see if we can summarize the ones we have talked about, the \$22,000 note on November 20, 1950, the \$10,000 credit arrangement in May of 1951, the \$1500 advance on the \$22,000 mortgage arrangement which was in April of 1951.

I think those are all, are they not, that we have been talking about so far?

A. No, I don't think that is all of them, but that

(Testimony of Chet L. Parker.)

seems to be all I have a record of right here at my disposal.

Q. Well, suppose you go ahead and tell us about what other ones you may have had. [304]

A. Well, I had—I loaned him some money to rock a road into Gopher Valley one time.

Q. You loaned money to whom?

A. I loaned money to Mr. Stegmann to rock a road into Gopher Valley; not into Gopher Valley, but in that vicinity of Gopher. I loaned him some money to rock his road.

Q. What year was that? Was that in 1949?

A. I don't remember what that was.

Q. Let's see if we can get them listed, and then we will get back into the transaction. Gopher Valley would be—was that that loan of \$6,000, Mr. Parker?

A. I believe it was. We have submitted in evidence the——

Q. Yes; well, we will go into the Exhibits, but would that be approximately that \$6,000 loan there?

A. I don't know the amount.

Q. All right.

A. I think it was more than that.

Q. All right. Now, what others were there?

A. Oh, it seems like I loaded some logs, or my brother did at one time. He owed me three or four thousand dollars on that.

Q. I don't understand your testimony. You say you loaded some logs for your brother?

A. I think my brother loaded some logs for him with my equipment. [305]

(Testimony of Chet L. Parker.)

Q. Your brother loaded some logs for Stegmann with your equipment? A. As I remember.

Q. What did that involve in the way of a financial transaction with Stegmann?

A. Well, I would say between three or four thousand dollars.

Q. Money that Stegmann owed to your brother?

A. Yes. Well, indirectly he owed it to me. It was my equipment. My brother was taking care of the job.

Q. It was really your job, do you mean?

A. Pardon me?

Q. You mean it was really your job, that your brother was supervising it?

A. Well, it became my job finally.

Q. How did it become your job?

A. Well, they had an agreement with my brother instead of me, to start in with, verbal agreement. Later it became involved with me.

Q. Did that involve a loan to Stegmann or the payment of some of Stegmann's debts?

A. Well, yes, I took a mortgage on his house in lieu of them.

Q. And you, in turn, paid your brother?

A. Well, as I remember, I paid my brother.

Q. Would that be in 1949, do you think? [306]

A. I don't know what year it was, somewhere in there.

Q. All right. Now, what other financial transactions have you had with Mr. Stegmann?

A. Directly or indirectly, or how?

(Testimony of Chet L. Parker.)

Q. Either way.

A. Well, he loaded some logs for Willamina Lumber Company off from my properties sometime.

Q. You loaded some logs?

A. Yes, for Willamina Lumber Company. I owned the logs. They were my logs. It was on property I did not own, but I had a right to be there. He loaded logs for Willamina Lumber Company, but they were my logs.

Q. Did they involve some financial transaction between you and Walter Stegmann?

A. Well, indirectly, why, it was figured—the amount of money I would receive for the logs at the price he would load them for, it was very indirect, but we did have a contact.

Q. Well, let us see now, You mean you had some logs which you sold to Willamina Lumber Company; right?

A. Yes.

Q. And Walter Stegmann loaded those logs and hauled them in, did you say, or just loaded them?

A. I don't know whether he hauled them in or not, but I know he loaded them. [307]

Q. Who paid Stegmann for the loading of the logs?

A. Willamina Lumber Company did.

Q. They paid him direct, and then in turn was that deducted from the amount that you received for the logs?

A. Yes.

Q. About when was that?

A. Oh, I don't know. It might have started in

(Testimony of Chet L. Parker.)

somewhere, oh, I don't know, 1948, 1949, somewhere in there. I am not saying exactly 1948 or 1949.

Q. 1948 or '49? A. But it was thereabouts.

Q. Could it have been before 1948?

A. Well, it is entirely possible.

Q. What others were there?

A. Well, that seems to be about all I can remember just sitting here. Do I have to remember all of them right now?

Q. Well, I am not going to be mad at you if you do not. I want a list of all that you can remember, and, no doubt, you will have a chance to think this over during the recess, and maybe you will remember some more.

You have listed all of the deals, now, that involved any exchanges of money between you and Walter Stegmann; right? Either you paying him or he paying you any money?

A. Well, have I mentioned the Rutherford deal?

Q. With the exception that you may have mentioned another [308] one.

A. Oh, yes, did I mention the Rutherford deal? I have forgotten.

Q. The Rutherford deal was tied in with your Gopher Valley, was it not?

A. Well, yes, there was two or three deals on the Gopher Valley deal, and Rutherford was one phase of it, I guess you would say.

Q. Yes. Well, I considered the Rutherford deal as a part of the Gopher Valley. Now, I am interested in finding out from you all of the transactions which

(Testimony of Chet L. Parker.)

involved your paying any money to Walter Stegmann or him paying any money to you, and these are all that you remember at the present time, the ones that you have listed?

A. That is all I remember now.

Q. Have you included in my questions—in your answers to my questions have you included any instances where you may have paid Walter Stegmann money as wages for any services?

A. Was that any wages I would have paid him; that is supposed to be included in the question?

Q. Yes.

A. Well, I paid him on this Winans transaction.

Q. I am excluding the Winans transaction.

A. On the Gopher Valley deal I believe he had—there again we are back to that Gopher Valley deal.

Q. I think you testified this morning that you thought that [309] you might have paid a finder's fee on the Wrist timber?

A. Yes, I think I paid him a finder's fee on that.

Q. All right. Now, were there any other cases where you may have paid him any money for any services performed?

A. It seems like I paid him to run a loader one time for me; I am not sure.

Q. Running your loader?

A. Yes, but I am not sure about that.

Q. When would that be about?

A. I think I purchased the loader in 1949 and

(Testimony of Chet L. Parker.)

got rid of it in 1941 or '2. It would have to be during that time before——

Q. Did you say 1939 and '41 or '2, or did you mean 1949 and '52?

A. '49 sometime to '51 or '52 I sold it. During that time I think, but I am not sure, that he might have operated it or took care of it. It was quite a large piece of equipment.

Q. That would be, I suppose, in connection with a logging operation which you were conducting?

A. I think I was conducting that portion of it.

Q. He was then an employee of yours at that time operating a loader?

A. Well, I am not sure he was, but he could have been, but it is very dim in my memory.

Q. If you paid him for renting a loader, I assume he was hired and on your payroll, was he not? [310]

A. Well, it would show on the payroll record. It is very dim. I am trying to remember everything on this, every instance. It is very dim, but I think before, it seems like that he did run a loader for me, but I am not absolutely certain.

Q. All right. Do you think now you have given us all of the cases that you can remember where you may have paid him for any services?

A. As I sit here, it is all that I can think, all that I can remember.

Q. Have you ever, at any time have you ever had any arrangement with Stegmann in regard to the purchase of timber tracts? Have you ever had

(Testimony of Chet L. Parker.)

any arrangement with him whereby he would try to locate timber for you?

A. No, not locate timber for me, for the purpose of myself purchasing it or something like that?

Q. Yes. A. No.

Q. So you have never paid him—I am excluding now the Wrist timber where you did pay him a finder's fee—I take it that was not pre-arranged, however?

A. No, that was not pre-arranged at all.

Q. There has never been a case where you said to Mr. Stegmann, "Go out and see if you can find a tract of timber; let me know about it, and maybe I will buy it," never anything like [311] that?

A. There was no arrangement. I quite frequently tell someone, "If you know of a piece of timber, let me know about it." In fact, just every day almost I tell someone.

Q. Well, did you ever tell Stegmann that?

A. It is very possible I did.

Q. Did you ever pay him a finder's fee at any time except on the Wrist tract?

A. That is all that I remember anything about.

Q. Well, now, on the other end of it, on the selling end, did you ever ask Mr. Stegmann to do anything for you with relation to the sales of any timber?

A. Being a salesman for the timber?

Q. Well, I don't care about the terminology. Did he ever do anything on your behalf in the selling of any of your timber?

(Testimony of Chet L. Parker.)

A. Yes, in this Winans tract he went up and showed Mr. Kenny or was supposed to have shown him, the corners, quarter corners.

Q. That is the occasion when you paid him \$20 to show Kenny the quarter corners?

A. That is right.

Q. Were there any other occasions?

A. I think he took also Mr. Kenny into Bear Creek. I am not sure he did, but I think he did.

Q. Was that for the purpose of interesting Mr. Kenny or his company in buying the Bear Creek timber? [312]

A. No, he was supposed to show him the corner and the lines.

Q. Was Mr. Stegman paid for that service by you? A. I think he was.

Q. All right. Were there any other occasions?

A. Yes, I think—well, I am not sure.

Q. You are not sure whether there were any others or not? A. No, I am not.

Q. You do not remember any at the moment now concerning these lines?

A. The corners, he was more familiar with that stuff than I was.

Q. By the way, when did he show Mr. Kenny the Bear Creek timber?

A. I don't know; before they bought it, no doubt.

Q. When would that be?

A. When they bought it?

Q. Yes. A. I suppose in 1951.

(Testimony of Chet L. Parker.)

Q. Did you ever pay Mr. Stegmann any commission on any timber sales that he ever made?

A. No, not in the sense of a commission.

Q. Pardon?

A. Not in the sense of a commission.

Q. Did you ever pay him anything in part—in compensation in connection with the sale of timber which he made? [313]

A. Not on the sale of timber, no.

Q. I notice in your income tax return that you list an expense item which includes commissions on sales. Can you tell what that was?

A. Well, I have not got it here so I would not be able to tell you.

The Court: It is only a small item of \$205; in other words, commissions on timber sales, cruising, and contract labor—\$12,000.

Mr. Strayer: \$12,000.

The Court: \$12,000. Show it to the witness.

The Witness: I do not seem to find it. What are you talking about?

Mr. Strayer: May I approach the witness?

The Court: Yes; everybody may approach the witness in the interest of speeding up the case.

Q. (By Mr. Strayer): What is that (indicating on document)?

A. Oh, wait a minute. Oh, yes.

Q. The question is, the Item 1, of your income tax return for 1951, Commissions on Timber Sales,

(Testimony of Chet L. Parker.)

Cruising, Contract Labor, \$11,205.98; do you know whether that includes amounts paid as commissions for the sale of timber?

A. Well, the \$11,205.98 does not segregate cruising of timber of which I had considerable, no doubt, and contract labor, no doubt, would have been considerable, and it does [314] not make it clear here to me what the commission on timber sales—whom it was to and how much it was.

Q. It is not clear to me, either, Mr. Parker. Do you have any recollection of paying any commission for timber sales?

A. It seems like I did pay commission to one man for a timber sale.

Q. Who was that?

A. Well, it was a sidewalk broker. Let's see. I can get my notes. I think it will tell about it.

Q. It was not Walter Stegmann?

A. No, it was not.

Q. As you recall, there was only one occasion where you paid any commission?

A. As I recall, yes.

Q. Look on Page 4 of your income tax return, the list of Sales of Capital Assets. Can you identify from that the occasion on which you paid a commission on a sale?

A. I think I paid a real estate broker some money on the Clackamas River property, for one. I am not sure I paid him that year, but I think I did.

(Testimony of Chet L. Parker.)

Q. The Clackamas River property, was that timber or a home?

A. It had some trees on it, but it was potentially a home.

Q. That is the occasion that you refer to when you paid a commission on a sale?

A. No, that would not be the only one, but I remember that [315] one.

Q. Do you remember any others?

A. I remember this sidewalk broker, paying him a commission.

Q. That was on the sale of a timber tract?

A. Yes, it was.

Q. Can you identify which timber tract it was?

A. I think it had to do with the Cottrell timber.

Q. That is the one up in Clark County, Washington, is it? A. Yes.

Q. Do you remember who that was that you paid that commission to?

A. I don't remember his name, but I gave him a check, I think, for it.

Q. Did he find a buyer for you on that?

A. Yes.

Q. Who was the buyer?

A. As I remember it, it was Weedman Lumber Company.

Q. As a matter of fact, was not Mr. Stegmann showing that same property to the Weedman Lumber Company?

A. You mean showing it to sell it to them?

Q. Yes.

(Testimony of Chet L. Parker.)

A. No, he was not supposed to. I don't know that he was, but he was not supposed to.

Q. You don't know whether he did?

A. I know he was up to show them the lines and the corners, [316] but he was not showing it to them as a salesman to sell it to them.

Q. Well, did you send Mr. Stegmann up to show the Weedman Lumber Company the lines and the corners on the Cottrell tract?

A. As I remember, I believe I did.

Q. Did you pay him for that service?

A. I think I did.

Q. When would that be?

A. Well, I suppose in '51.

Q. When was the sale of the Cottrell tract? Your income tax return shows it, does it not?

A. I don't know; '51, I guess, or '52.

Q. Well, you sold it in two separate tracts, apparently, on April 9, 1951, and March 15, 1951; is that correct?

A. I suppose.

Q. Your recollection is that you sent Stegmann up to show the Weedman Lumber Company lines and the corners.

A. Yes, I believe I did.

Q. That is all he was supposed to do?

A. He certainly was not to sell it to them.

Q. He was not supposed to aid in any way in the sale?

A. No, other than to show them the lines and corners.

Q. Were you offering that property to anybody else?

A. Oh, I probably was.

(Testimony of Chet L. Parker.)

Q. Do you remember anybody else that the property was [317] shown to?

A. No, not right now I don't; no.

Q. Do you recall Mr. Rutherford going up to look at it?

A. No, but it seems like I called him on it, though.

Q. Does it not also seem like he went up there to look at it?

A. Well, I don't think I was with him, and I don't know.

Q. Well, don't you know, as a matter of fact, Mr. Stegmann was with him?

A. Well, I don't remember that Mr. Stegmann was with him or was not with him. I showed that property, as I remember, to, oh, possibly a hundred people, and certainly it is hazy in my mind just who went where what date, or anything about it.

Q. Did you tell Mr. Stegmann to show it to Mr. Rutherford?

A. I don't know that I did or didn't.

Q. It could be that you did?

A. It is very possible I told him to show the corners, the lines.

Q. If you did, did you pay him for the service?

A. Well, he generally wanted his money. I don't know whether I paid him or not. If he didn't ask me for it, I probably didn't.

Q. Well, now, has this, this testimony, has this reminded you of any other transaction, similar transactions?

A. No. [318]

(Testimony of Chet L. Parker.)

Q. How long has it been since your last transaction of any kind with Mr. Stegmann?

A. Oh, I think two or three months ago. I would say 90 days ago.

Q. What sort of a deal was that? ^

A. Well, I think an attorney in McMinnville wrote him a letter threatening to sue him, I believe, or something, I believe, but I don't remember the details, don't remember the letter—on the first mortgage that I purchased from the First National Bank in McMinnville.

Q. I am talking primarily about timber deals, Mr. Parker.

When was your last arrangement with Mr. Stegmann of any character relating to timber or timberlands?

A. I believe it was the Winans piece.

Q. You had no contact with him on any timber since Winans?

A. Well, I won't say none whatsoever, but I don't remember any, I am saying.

Q. Well, did you know, Mr. Parker, that Mr. Stegmann never made an effort to dispose of the Winans property after you bought it?

A. He never made an effort?

Q. Do you know whether he ever made an effort to sell the Winans property after you bought it?

A. No, I don't know that he did or he didn't.

Q. Well, was not Mr. Stegmann also instrumental in picking [319] up some timberland for you up

(Testimony of Chet L. Parker.)

in the State of Washington after that Winans transaction?

A. Mr. Stegmann was, to my knowledge, never instrumental or connected or had anything to do with any purchase of any timber in Washington that I recollect.

Q. He never gave you any information about timber for sale? A. Not that I purchased.

Q. Well, that you were thinking about purchasing?

A. It seems like he showed me a piece one time that he is supposed to have had up—I even forget the town. It was in, way back in the mountains, anyway.

Q. All right. I think we will backtrack now, but I want to get a little information on this Gopher Valley transaction, so-called.

My understanding is that that originated with a contract which Mr. Stegmann had with the Arthurs to buy the timber on the Arthur property; is that substantially correct?

A. I think that is right.

Q. According to my information, that contract was made about September 1, 1949; does that correspond with your recollection?

A. I suppose that is somewhere in there.

Q. The record indicates—that is also known as the Murphy and Nelson timber, is it not, Mr. Parker?

A. I don't know what. I think that is what it was known as. I am not sure, however. In fact, I

(Testimony of Chet L. Parker.)

think it was known as the [320] Arthur-Thompson timber instead of the Murphy-Nelson.

Q. Arthur-Thompson timber. Wasn't it also called Murphy-Nelson?

(Discussion off the record.)

Mr. Buell: We had a copy of that marked as Exhibit 33 and have now obtained certified copies which are more complete.

Mr. Strayer: May we have this document marked Exhibit 33-A and hand both of them to the witness?

(Photostat of chattel mortgage dated September 10, 1949, was thereupon marked Plaintiff's Exhibit 33-A for Identification.)

Q. (By Mr. Strayer): Referring to the Plaintiff's Exhibit 33-A, Mr. Parker, is that a copy of the mortgage that Mr. Stegmann gave you in connection with the Gopher Valley transaction?

A. It looks like it.

Q. That was a mortgage to secure this \$6,000, was it not?

A. Yes.

Q. That was a mortgage on his house?

A. No, I do not think it had anything to do with his house.

Q. What did it cover?

A. Covered rocking a road in, as I remember.

Q. Well, that is what he wanted the money for, but the [321] security for the mortgage was his interest in the contract, was it, or in the timber?

(Testimony of Chet L. Parker.)

A. I suppose it was his interest. It was not his house; I know that.

Q. I seem mistaken on the house, but I think that the—look on the face of the mortgage. Isn't it a mortgage on what is known as the Murphy-Nelson timber, Mr. Parker?

A. That is what it says. I am not sure, but that might be an error; however, it says it belongs to Mr. Thompson.

Q. Well, what error do you mean? Do you mean the mortgage should have been on something else?

A. Well, I don't know whether they call it Murphy-Nelson or the Thompson, Arthur, or what it was called.

Q. Regardless of what name we should call it, did you understand that you were taking a mortgage on that timber on which Mr. Stegmann was working, as security for the loan?

A. Well, I did, but I didn't own it. I don't know whether he was giving me a mortgage on it or not. We had a working agreement that I would get so much a thousand for all the logs hauled out if I would furnish the money to finish the job or rock the road.

Q. But that came later, did it, Mr. Parker?

A. No, I think it had to do with this thing.

Q. You loaned him over \$6,000 for the purpose of building a road, is that right? [322]

A. And to log this property.

Q. Do you recall buying a right-of-way which was used by Mr. Stegmann in connection with that

(Testimony of Chet L. Parker.)

logging? A. Do I remember purchasing it?

Q. Yes. A. On my own behalf?

Q. Yes. A. No, I don't.

Mr. Strayer: Will you hand the witness Exhibit 32.

Q. Isn't Exhibit 32 the right-of-way which you purchased, the grant of a right-of-way, Mr. Parker?

A. Not to me it isn't.

Q. What is it?

A. Well, it is an interest; that is—that a party has, would have in the road.

Q. Well, for what purpose did you buy it?

A. I didn't purchase the right-of-way. This had nothing to do, didn't have anything to do with the right-of-way.

Q. Well, for what purpose did you take that agreement?

A. For the purpose of going ahead with the logging. This was to do with rocking the road into the property.

Q. It had to do with the performance of that contract which Mr. Stegmann had made on the Arthur tract of timber, did it not?

A. Yes, it had a direct connection with it. [323]

Q. And you purchased whatever that instrument purports to convey in your own name in connection with the performance of that contract, did you not?

A. (No answer.)

Mr. Strayer: I think the instrument speaks for itself.

(Testimony of Chet L. Parker.)

A. I am not sure I did in my own name.

Q. All right. The instrument speaks for itself on that.

Is it not a fact, Mr. Parker, that along toward the end of 1949 or early in 1950 that Mr. Stegmann became very involved financially and that you found it necessary to come to his rescue and arrange a new financial arrangement? I am referring to the Rutherford contract which was made in March, 1950.

A. Well, he wanted to sell the timber, as I remember, instead of log it, quit logging and go to selling, sell the timber, and I don't know that I came to his rescue exactly.

Q. How much did he owe you at the time that the Rutherford deal was made?

A. Well, that I am not sure about.

Q. Will you hand the witness Exhibit 34.

The Court: When was the Rutherford contract?

Mr. Strayer: March 23, 1950, your Honor.

Q. That is a copy of the contract made by Rutherford and Stegmann on March 23, 1950, is it [324] not? A. I guess so.

Q. And attached to that contract is an Exhibit which sets forth the amount that was owing by Stegmann. Was there not some \$5,960 or \$5,650?

A. I think it is.

Q. Is it not a fact, Mr. Parker, that that amount is made up of various sums of money that you had been required to expend on behalf of Mr. Stegmann to keep him from losing his contract on the Arthur timber?

(Testimony of Chet L. Parker.)

A. Well, some of these people involved were my friends from many, many years, and there was a little quarrel between Mr. Stegmann and these friends of mine as to the exact amount he owed them, and I more or less arbitrated the quarrel, you might say.

Q. Well, it is a fair statement, is it not, that Mr. Stegmann at that time was in financial trouble, and you had to come to his rescue by paying some of these bills that were pressing him?

A. Well, I wasn't forced to.

Q. I do not mean to say that you were forced to, but that is the fact, is it not, that he was in financial difficulties with his creditors?

A. Well, I paid these bills.

Q. Isn't it a fact that you paid those bills in order to protect your own loan in order to make sure that Stegmann [325] did not lose the timber rights which he had?

A. It was very important that he did not lose them.

Q. That is the reason you paid the bills, is it not?

A. That is not the only reason.

Q. That is one of the reasons?

A. That is one of the reasons.

Q. When was that loan paid off?

I notice under the Rutherford contract Rutherford was to take over and log that timber instead of Stegmann, and there would be certain payments made by Rutherford and certain stumpage or a price per thousand feet paid to you, apparently, un-

(Testimony of Chet L. Parker.)

til you had been paid around \$7,000. I also notice that according to that endorsement on the bottom of the mortgage which Stegmann gave to you that that mortgage was later satisfied of record.

Now, can you say when it was that that amount was paid off, or was it ever paid off?

A. Whether Mr. Stegmann ever paid it down?

Q. Yes.

A. I think Stegmann paid me under this deal.

Q. How much did you receive under that Rutherford contract?

A. The total amount, I don't know exactly.

Q. Do you have any method of determining it?

A. No, I don't take care of those things. I wouldn't know.

Q. Well, we have here, I believe, a record of your deposit [326] slips during that year. Should they show the amount that you received on that?

A. Not to my knowledge they would not.

Q. You would not know anything about that?

A. No, I wouldn't.

Q. We will have to ask Mrs. Parker about that, will we?

A. If you want to know anything about it, you will have to.

Q. Do you recall whether you ever received anything from Mr. Stegmann on that loan in addition to what you received from Rutherford?

A. No, but I think I just received it from Mr. Rutherford, as I remember.

(Testimony of Chet L. Parker.)

Q. You think it was paid in full by Mr. Rutherford under the contract?

A. I think it was.

Q. Isn't it a fact, Mr. Parker, that in connection with the performance of that Gopher Valley job that this White truck deal, the replevin suit, arose that I was talking to you about this morning?

A. I don't know what suit you are referring to, so I would not be able to answer that.

Q. You do not remember an occasion where Mr. Stegmann ran up a considerable bill at the Willamina Garage for repairs for his equipment?

A. No, I didn't have anything to do with running the bill. [327]

Q. I didn't say you did. Don't you remember knowing about the difficulty at that time with the garage having that bill?

A. Well, I bought this White truck from Mr. Heider, as I remember, and I paid him for it, wrote him a check for it. I did not buy it from Mr. Stegmann or the garage or anywhere else so that is my memory of this transaction.

Q. Was that, by any chance, the truck that Mr. Stegmann owned before you bought it from Heider?

A. He could have owned it before I bought it from Heider. Heider owned an awful lot of trucks that belonged to other people at that time.

Q. I notice among the mortgages of record down there in the county a mortgage from Stegmann to Heider. Let us see if I have the date on that. I believe it was around September, 1949, on a White

(Testimony of Chet L. Parker.)

truck, and I believe—I could be mistaken about this—but I think that the motor number of that truck that was taken on the mortgage to Heider is the same as the motor number of your White truck that you owned. Now, do you know anything about that?

A. I wouldn't even know the number, and I wouldn't know whether it was correct or incorrect if I saw it. I don't think I ever noticed about the number.

Q. Well, there is a mortgage record dated September 23, 1949, from Stegmann to Heider on a White truck and a Walker trailer. You have no knowledge of whether that is the same truck or [328] not? A. Well, it could be the same truck.

The Court: In whose name was that action, replevin action, brought by Mr. Heider?

Mr. Strayer: Chet L. Parker, your Honor; Chet L. Parker vs. Marlow and Ellis, was it?

The Court: Did he sign the complaint? Did he verify the complaint?

Q. (By Mr. Strayer): Do you remember verifying the complaint in that case?

The Witness: I don't remember anything about the suit.

Mr. Strayer: We have asked for a certified copy of the proceedings, your Honor. We do not know ourselves whether he verified it or not.

The Witness: The reason it is a little confusing to me, Otto Heider's suing, I don't understand that. I don't remember Otto Heider suing to get posses-

(Testimony of Chet L. Parker.)

sion of something I bought from him. That is the confusing matter.

Q. (By Mr. Strayer): Mr. Parker, do you remember later with reference to this Arthur timber, the same timber we were talking about as the Gopher Valley transaction, do you remember talking to Mr. Elmer Scoville about buying that timber?

A. Yes, I believe I did.

Q. Tell us about that. [329]

A. Well, it is very hazy in my mind, certainly. I believe I mentioned to my grocer, Mr. Walker, that Walt might sell his holdings up on Gopher Valley, and he knew—he later came up with Mr. Scoville. I believe he came up with his name or came with him, or something.

Q. He came with Scoville, you say?

A. I think this Mr. Walker did. He contacted him, as I remember. He knew him from Tillamook, acquaintances, and I don't know whether he showed him the timber or Mr. Stegmann did. Anyway, Mr. Stegmann and Mr. Scoville came down to my house one day, and they wanted me to make an agreement for them. They was going to purchase it, and I believe I called my—I don't believe my wife was home that day. The reason I remember that, I believe my niece came over. She made so many errors everyone got angry about it that I finally tried it, and I did worse, but I remember making up an agreement between Scoville and Stegmann, and I read it to them. I said, "Now, does this suit you, Mr. Scoville? Does this suit

(Testimony of Chet L. Parker.)

you, Mr. Stegmann? I don't have a thing to do with this deal. You fellows are the cuckoos dealing on it, though." That is about the extent I know anything about it.

Q. Can you tell us the date for that action?

A. No, but there was a contract made up on it.

Q. Can you give us the approximate date with relation to these other matters? Was it after the Rutherford deal? [330]

A. No, it was before, I suppose. I don't know.

Q. Your recollection is that it was before the Rutherford contract?

A. Well, it has been a long time ago. I do not know whether it was before or afterwards.

Q. Well, now, that contemplated the sale by Mr. Stegmann of his interests in the Arthur timber to Mr. Scoville, did it?

A. I think they signed a deal then. I am not sure.

Q. Were you the one that put Mr. Scoville in touch with Mr. Stegmann on it?

A. Mr. Walker could have. I believe Mr. Walker did.

Q. Mr. Walker did not deal with Scoville, did he?

A. Well, I don't know. I don't know that I had any contact with Mr. Scoville directly at that time. I don't know that he did.

Q. Did you have a mortgage on any other equipment of Mr. Stegmann's that you have not told us about yet?

(Testimony of Chet L. Parker.)

A. Well, I don't remember of any other.

Q. Incidentally, I notice that your mortgage on that in the Arthur timber was recorded?

A. Pardon me. It was or was not?

Q. How did it happen you recorded that mortgage?

A. Well, I don't know the reason, but we recorded it. We had it, and I suppose we recorded it, and that is about that. [331] I don't know——

Q. Did you have a mortgage on any of his motor vehicle equipment, Mr. Stegmann's motor vehicles?

A. Are you referring to motor vehicles, cars or——

Q. Cars, trucks.

A. Not that I remember having a mortgage on it.

Q. Let me remind you of one in particular.

Do you recall an occasion in May of 1950 when Mr. Stegmann was driving a truck with a Caterpillar aboard and slid down off the road into the Trask River or near the Trask River? Do you remember that occasion?

A. No, I do not. I know where the Trask River is very vividly. I have walked every foot of it many, many times, and I don't remember having anything to do with Mr. Stegmann concerning a Cat or a truck on the Trask River.

Q. Don't you remember that you had a mortgage on a truck and I believe also a tractor, and that Mr. Heider also had a mortgage on the truck—on the tractor? Don't you remember?

(Testimony of Chet L. Parker.)

A. What has that got to do with the Trask River? I don't understand that.

Q. Let us leave the Trask River out of it, then. Don't you remember an accident where Mr. Stegmann was driving a truck loaded with a tractor, and they slid down off the road, and there was a heavy loss, and you filed a claim against the insurance company for the loss? [332]

A. Stegmann was supposed to have owned the Cat?

Q. Well, I am asking you for your recollection on it.

A. Well, I am a little confused on it.

Q. How many claims have you made for loss of either Caterpillar or a truck that slid off the road?

A. I don't remember making any, but I do remember of a Cat that belonged—I don't believe it was Mr. Stegmann's—that slid off the road. I think it was, I don't know, a two or three thousand dollar claim or something.

Q. Two or three thousand what?

A. Claim. I don't remember the amount.

Q. How about the truck? Didn't you have a mortgage on the truck?

A. Well, I don't remember having a mortgage on the truck.

Q. Let me give you some more details and see if it does not come back to you.

Don't you remember that you took—a claim was filed by you and Stegmann and Heider against the insurance company, and don't you remember that

(Testimony of Chet L. Parker.)

the loss in the amount of \$8,000 was paid off, and you divided that money among the three of you? Don't you remember that you bought the salvage on the damaged equipment?

A. You mean we split this thing up three ways?

Q. Well, do you remember any of that?

A. Well, I certainly didn't split anything in any insurance [333] loss with any other person. I would not—where I split the money received from any insurance company with anybody I would certainly remember that.

Q. You do not remember an occasion where you had a second mortgage on a motor vehicle, and Mr. Heider had a first mortgage?

A. Well, I remember a Cat loss, but I think I purchased—the reason it is a little confusing to me, over near the Trask River I purchased an International TD-18, I believe it was.

Mr. Jaureguy: Did you want him to stop while you were talking here?

Mr. Strayer: No, go right ahead.

The Witness: An International TD-18 from an insurance company after it had been wrecked, but I didn't have anything to do with the wreck.

Q. (By Mr. Strayer): All right. Let us talk about that International. Now, isn't it a fact that you had a mortgage on that, that same truck, before it was wrecked?

A. This didn't have anything to do with a truck. This was a Cat.

Q. You are talking about an International Cat?

(Testimony of Chet L. Parker.)

A. Yes, TD-18 International Cat. The reason I remember it, I sent my son over. I couldn't go. He was then, I guess, 12 or 13 years of age, and I sent him over and down a 400-foot [334] canyon to appraise it. He was rather perturbed. I had my knee hurt at that time. He said, "Well, Dad, I sure hate to put a price on this thing. I might be wrong about it." I said, "Go ahead. Put your price on it and we will pay it anyhow." When he came home I think he was kind of worried whether he made a mistake or not, and he went over and helped me take it out of the canyon, and we sold later, I think I made a couple, three thousand dollars on it, and he felt rather happy about it that he had not misplaced his judgment, a 12-year-old. I remember that, but Mr. Stegmann never had anything to do with the Cat before, to my knowledge.

Q. Did you have anything to do with it before it went down off the road?

A. I never saw it before.

Q. Did you have anything to do with that truck that the Cat was on that also went down off the road?

A. I didn't know there was a truck involved in that particular sale that I purchased, this salvage I purchased. We must be talking about two different deals, here.

Q. Perhaps so. What year do you place that instance in? A. I would think 1950 or '51.

Q. In 1951?

A. I think so.

(Testimony of Chet L. Parker.)

Q. What was the name of the man from whom you purchased [335] this salvage?

A. I don't remember.

Q. Did you purchase the salvage on the truck about the same time or at any other time?

A. No; well, not that I remember, I didn't, not with this transaction.

Q. Are we, by any chance, mixed up on what river it might be? Are you still concerned about the Trask River? Could it have been the Nestucca or the Nehalem River?

A. Well, as I remember, it might have been—well, the reason I remember the Trask on the one Cat because that was right adjacent to a tributary of the Trask. I remember that Cat distinctly because we had a terrible time getting it out, but I just can't offhand remember——

The Court: Have you any documents on it?

Mr. Strayer: We do not have them available at the present time.

The Court: Put them in later. Let us go. He has now been on the stand eight hours.

Mr. Strayer: I know, your Honor; it is——

The Court: This case will have to be finished by Saturday night midnight, and it means that we are going to have night sessions beginning tomorrow because I have three jury cases, and we will go until 11:00 o'clock at night. We will start at night and go to 11:00. From 9:00 o'clock [336] tomorrow morning we will go until 11:00 o'clock tomorrow night and keep on going until we finish.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: No night session tonight, though?

The Court: No, not tonight.

Mr. Strayer: I am sorry the way this broke, but I feel it is important or I would not do it. I am going to try and summarize.

Q. This mortgage that you had on Stegmann's house, Mr. Parker, I will state as I understand the transaction. Then I want you to state any inaccuracy or inaccuracies that you believe are present. As I understand it, you bought this house in McMinnville on June 2nd, 1950. On July 20, 1950, Stegmann bought the house from you and gave a mortgage to the bank at McMinnville for \$6,000. On August 20, 1950, Stegmann gave you a mortgage for \$3,500 due on August 29, 1953, and on July 20, 1950, your deposit slips indicate that Mr. Stegmann paid you \$2,000 on the house. In November of 1951 I understand Mr. Stegmann advertised the house for sale, but it was not sold and on August 7, 1952, Stegmann deeded the house over to you.

Now, is that substantially correct? I do not hold you to those exact dates, but have you picked up any inaccuracy as far as you remember?

A. I don't remember him paying \$2,000 on it, but I am not sure he did or didn't. [337]

Q. What is that?

A. Let's see; paying the \$2,000, I guess he did—I don't know whether he did or not.

Q. Are there any other inaccuracies that you noted? A. No, I guess they are all right.

Q. Now, your income tax return. We have

(Testimony of Chet L. Parker.)

talked about this Wrist timber sale, and in order that we can identify that by date, your income tax return for 1951 indicates, does it not, that you bought the Wrist timber on April 19, 1951, for \$3,000 and sold it on April 25, 1951, for \$6,000?

A. I think that was my wife's deal. That was her deal, I believe, but then I suppose I reaped the reward. It was my deal, too.

Mr. Jaureguy: I understood that that is what the income tax shows—that is what the income tax return shows. That is the question you asked?

Mr. Strayer: All right.

The Witness: I can't even find it.

Mr. Strayer: I think, your Honor, if we could have a very brief recess, I may be through.

The Court: Let me ask a few questions that have been bothering me.

Examination by the Court

Q. Mr. Parker, generally, was there any correlation between the security you received on a loan or the financial worth of [338] the borrower and the amount of interest that you charged?

A. I don't believe I understand that.

Q. You testified that you have loaned a considerable amount of money to various people, and you got from 4 to 8 per cent?

A. Yes.

Q. The question I am asking you, was there any correlation between the security you received and the amount of interest you charged?

A. I have loaned a lot of money, your Honor,

(Testimony of Chet L. Parker.)

without any security whatsoever, many thousands of dollars.

Q. Did you loan money to people who were financially involved or people who had a considerable amount of assets?

A. Why no, I loaned money to grubstake people and various things where they had no assets whatsoever.

Q. What were the sizes of these loans, approximately, or what was the range?

A. Willamina Lumber Company, I believe I loaned them \$50,000 when they were—the Manager told me if I wanted my money it would be finished, complete, and I let them go ahead and saw up my logs, for one example.

Q. Did you loan people money with whom you had no other business relations? A. Yes.

Q. Did you do it solely for the amount of interest that was set forth in the note; in other words, 4 per cent or 5 per [339] cent or up to 8 per cent?

A. Yes, or a certain amount per thousand on logs if it involved logs.

Q. In addition to that?

A. Yes, sometimes in addition to that.

Q. In other words, for the risk, in addition to interest you got so much a thousand on the amount of logs?

A. Which was quite helpful in the risk involved.

Q. Here you charge Stegmann 4 per cent. That is a low rate of interest, isn't it?

(Testimony of Chet L. Parker.)

A. Well, it was as far as I am concerned.

Q. That is lower than you can borrow from a bank on a secure obligation, isn't it?

A. Well, I have not borrowed lately. I don't know.

Q. Now, did you get anything, were you promised anything in addition to that 4 per cent interest?

A. No.

Q. On this \$22,000 loan and on this letter of credit of \$10,000 the total amount you received from Stegmann was 4 per cent?

A. That is right.

Mr. Jaureguy: On the others it was 6.

The Witness: On one of them.

The Court: On one of them it was 6. Now, didn't you have any arrangement to share in the profits with Mr. [340] Stegmann?

A. I did not.

Q. Did you have any agreement with him that you would have the first opportunity to purchase any timber that he bought with your money?

A. No; he told me he would let me know of any timber.

Q. How did you arrive at a 4 per cent figure with Mr. Stegmann?

A. Well, he wanted to pay 4 per cent. He didn't want to pay 6.

Q. You knew that he was, didn't have a great deal of assets, didn't you?

A. Well, he had stuff scattered all over the country.

Q. But at that time you had actually helped him

(Testimony of Chet L. Parker.)

out on two or three occasions when he needed money?

A. Yes, but, sir, he was up and down. Sometimes he would have a lot of money, and it seemed like the next time he wouldn't have so much.

Q. When he did not have so much you thought the 4 per cent was an adequate rate of interest?

A. I thought it was.

Q. He gave you security, didn't he?

A. Yes.

Q. Did you regard that security as adequate?

A. Pretty close. [341]

Q. His grader?

A. Yes, the yarder, and the Diesel on it. The Diesel would be worth probably under \$5,000.

Q. Well, what was the grader worth?

A. Well, the grader would be, oh, not to exceed \$1500, I would not think.

Q. That is \$6,500, and the loan was \$22,000?

A. Well, of course, the Diesel loader, and we had all the lines, rigging, drums and all the blocks and everything involved in this transaction on this yarder.

Q. They were scattered around?

A. The Diesel motor is part of the yarder.

Q. You thought that the value was around \$22,000?

A. Yes, it was very close.

Q. You buy a lot of timber, don't you?

A. Well, that—all my life that is about what I have been doing.

Q. Timber buying requires a considerable

(Testimony of Chet L. Parker.)

amount of cash, does it not? That is the way you make your deals is you go out to the people and pay cash for it?

A. Well, you don't always have to pay cash, but I buy the timber.

Q. Well, couldn't you have used this \$22,000 to better advantage than purchasing timber for yourself than loaning it out at 4 per cent? [342]

A. That is very possible. However——

Q. Wasn't it advantageous for you to keep a considerable amount of cash available to use in connection with possible timber deals?

A. I had quite a bit.

Q. You thought you had enough?

A. I figured I had enough on it.

Q. You considered 4 per cent was an adequate return or 6 per cent was an adequate return for the money?

A. This was, came out of a savings account I had, and I kind of treated it a little different than I did my hazardous account or timber business.

Q. Didn't you testify yesterday that you figured that the most that you could pay for this Hood River property was \$125,000? A. Yes.

Q. When you—and the next day you had a deal for it for \$300,000 to make \$180,000 on a quick turnover? A. Yes

Q. So you regarded 4 per cent as adequate, but you insisted on making \$65,000 in a few days on the timber deal?

A. I didn't insist on it. I hoped to.

(Testimony of Chet L. Parker.)

Q. What discussion did you have with Stegmann relative to the size of the profit or fee that he was to receive on this Hood River property before August 13th, on or before August 13th? [343]

A. Well, it seemed like he wanted a little more money for his option, as I remember.

Q. As I understand it, on the 13th you knew that he was going to pay \$100,000 for this property?

A. Yes

Q. You decided that when you went up there that \$125,000 was the maximum you could pay, but prior to that time had Mr. Stegmann told you what he wanted, what he wanted for the property or for his share?

A. Yes, I think he told me, but I don't remember.

Q. How much did he want?

A. Well, it seems like it was more than \$125,000.

Q. You finally agreed to pay him \$20,000, didn't you? A. Yes.

Q. That was a pretty sizable fee or a generous profit, wasn't it, for a quick turnover?

A. Yes, but I could see sixty thousand, and I hated to lose that.

Q. But he made this deal with your money, didn't he? A. Well, it was, in a loan.

Q. He was drawing on your account or his own account, and you had agreed to pay for it?

A. Yes.

(Testimony of Chet L. Parker.)

Q. Now, the first thousand dollars that was paid on this property was your money; that is, the money that was drawn—a [344] check for a thousand dollars which you paid? A. Yes.

Q. Under the deal, \$4,000 additional had to be paid by the 18th of August; that is true?

A. Yes.

Q. And that was also to be written on Mr. Stegmann's account, but you had agreed to pay it under the loan arrangement?

A. Yes, he wrote a check, of course.

Q. Now, that meant that although Stegmann was—the amount shown on the books was \$25,000, actually, Stegmann was only to make that \$20,000 profit because you were charging him with the \$4,000 and \$1,000?

A. Yes, I guess that is the way it figured out.

Q. Why on August 13th did you give him a check for \$25,000? Why didn't you give him a check for \$20,000?

A. He claims I outfigured him of the \$4,000 on the deal, but he—he owed me the money, and he wanted \$25,000 for the option, and I gave him the check for it.

Q. But after you had made the deal you mean to say that he thought he was getting \$25,000, but, actually, the way it figured out he only got \$20,000?

A. Well, yes, that is what it amounts to.

Q. And he did not permit you to deduct the \$1,000 and the \$4,000 from the deal?

A. No. [345]

(Testimony of Chet L. Parker.)

Q. On August 13th you had not met Winans or talked to them, had you?

A. Not that I remember, no.

Q. Wasn't it sort of unusual to pay Stegmann \$25,000 prior to the time that you knew whether Winans was going to go through with that deal?

A. Well, he had something to sell me.

Q. Well he just had a piece of paper, an option, didn't he? A. Yes.

Q. You didn't know whether Mr. Paul Winans had authority to sell the property?

A. No, I was getting a title search made, though.

Q. All right. We will come to that.

You gave him \$25,000 on August 13th, and that was the same day that you ordered a title search?

A. Yes.

Q. You did not know whether the title, the report, would show the title was in the name of Winans, did you? A. No.

Q. Well, isn't it unusual to pay \$25,000 out before you knew that the title was good?

A. Well, it is probably still—I did the same thing with Northwest Door just recently. I gave them \$90,000 without having title. [346]

Q. What is the net worth of the Northwest Door Company?

A. I suppose, I don't know what it is.

Q. They are a fairly responsible firm, aren't they? A. I kind of think so.

Q. But Stegmann at that time owed you \$22,000 on a mortgage and about six or seven thousand

(Testimony of Chet L. Parker.)

dollars under the loan agreement. That is \$28,000, and by that time you had known that his financial condition was not too good. By August 13th you knew that Mr. Stegmann was in financial difficulty, didn't you? A. Well, I had heard that, yes.

Q. And yet you were willing to give him that check for \$25,000? A. On this deal I was, yes.

Q. And you didn't try to apply it onto the amounts that he owed you?

A. Well, I think I mentioned it to him.

The Court: Let us take a recess, about a five or ten minute recess.

(Afternoon recess taken.)

(3:45 trial resumed.)

Mr. Strayer: I have no further questions, your Honor. Mr. Buell wants to put some exhibits in.

Mr. Buell: May it please the Court, in the course of [347] the direct examination Mr. Parker has identified and testified concerning Plaintiff's Exhibit 26, the Notice of Election to Purchase signed by Walter Stegmann, dated August 18th, which we offer in evidence.

The Court: All right.

Mr. Buell: Plaintiff's Exhibit 32, the assignment of right-of-way from Arthur Sowle and Roy L. Stafford to Chet L. Parker, dated February 23, 1950.

Exhibits 33 and 33-A, photostatic copy of mortgage from Walter Stegmann to Chet Parker.

(Testimony of Chet L. Parker.)

Exhibit 34, contract between Walter Stegmann, Chet Parker, and Rutherford Logging Company.

Exhibit 35 and Exhibit 35-A, the \$22,000 note and mortgage.

Exhibits 36 and 36-A, original and copy of \$10,000 note and agreement.

Exhibit 38-A, original and copy of Check No. 75 payable to Ethel Winans, \$1,000.

Exhibit 38-B, original and copy of Check No. 81, payable to Ethel and Paul Winans for \$4,000.

Exhibits 39-A, -B, -C and -D, which are the original and copy of checks payable to M. H. David in the amount of \$150, Mr. Leo Johnson, \$2,500, and Mrs. A. Leo Johnson, \$2,000; a transmittal note from The First National Bank of McMinnville to Mr. Parker returning the canceled checks. [348]

Exhibits 40 and 40-A, original and copy of the \$25,000 check.

Exhibits 41 and 41-A, original and copy of Check No. 1193 to Stegmann in the amount of \$382.

Exhibit 42, photostatic copy of Phillips Construction Company bank statement for August and September, 1951.

Exhibit No. 49, United States Income Tax Return of Mr. and Mrs. Parker of 1951.

Exhibits 57-A and -B, the telephone calls from the phones of Parker and Walter Stegmann.

Exhibit 104, check to Title and Trust, dated August 16th, in the amount of \$25.

Exhibit 307, Notice of Election to Purchase.

The Court: Is that all?

(Testimony of Chet L. Parker.)

Mr. Buell: That is all, your Honor.

The Court: Any objection?

Mr. Buell: I am sorry. There are two more. Exhibits 320 and 321 which are the letters of the Bank of Hood River to Mr. Parker.

Mr. Lindsay: They have been previously admitted.

The Court: Mr. Jaureguy?

Mr. Jaureguy: There is no objection whatever. I think we received one or two of the exhibits Mr. Parker did not identify.

Mr. Buell: As to the telephone calls that is [349] correct.

Mr. Jaureguy: There is no objection.

The Court: They may be admitted.

(Documents heretofore identified as Plaintiff's Exhibits 26, 32, 33, 33-A, 34, 35, 35-A, 36, 36-A, 38-A, 38-B, 39-A 39-B, 39-C, 39-D, 40, 40-A, 41, 41-A, 42, 49, 57-A, 57-B, 104, 307, 320 and 321, respectively, were thereupon received in evidence.)

The Court: You may proceed, Mr. Krause.

Cross-Examination

By Mr. Krause:

Q. Mr. Parker, you have a counterclaim in this proceeding against a number of Winans brothers and sisters. Will you tell us what that is based on?

Mr. Jaureguy: I think that is a misstatement, counterclaim.

(Testimony of Chet L. Parker.)

The Witness: I don't know anything about legal affairs. I would not know that.

Mr. Krause: It is entitled a cross-claim, Cross-Claim of Defendant Chet L. Parker against Paul Winans, Ethel Winans, Ross M. Winans, Audubon Winans, and Linnaeus Winans, in the sum of \$125,000.

What is that based on, Mr. Parker? [350]

Mr. Jaureguy: I want to object to that on the ground that that is a legal question.

The Court: You might ask Mr. Jaureguy the question. He prepared the pleadings. These pleadings are not signed by the parties. They are based upon information which the party gave to his attorney. He is not expected to know all these things. Ask him specific questions.

Q. (By Mr. Krause): Mr. Parker, do you claim that any of the Winans misrepresented anything to you in connection with this deal on the Lost Lake property?

A. Well, I have a—on the assignment they say they will get me a good deed.

Q. In the first place, you got a paper?

A. Yes.

Q. You received an assignment from Mr. Stegmann on an option? A. Yes.

Q. You say that that option, on the basis of that option there was a misrepresentation, is that right?

A. Well, it says a good deed on it. I guess it is written necessarily on good paper, but it is not what I would call a good deed.

(Testimony of Chet L. Parker.)

Q. Then the deed that you finally received, you feel, was not a deed that the option called for?

A. That is right. [351]

Q. All right. What else?

A. Did I claim against the Winans?

Q. Well, no; what misrepresentation was made to you by any of the Winans?

A. Well, when Mr. Paul Winans told me he had a good title. I don't know what a good or bad title is, but I presume when you say you have a good title you own something.

Q. On Monday morning you had ordered a title report at Hood River. That was the 13th of August?

A. I don't know whether it was morning or afternoon.

Q. Was it before you saw Mr. Paul Winans for the first time? A. Yes.

Q. Then after having ordered a title policy you saw Mr. Paul Winans on the 13th of August?

Mr. Jaureguy: No.

Mr. Krause: Isn't it?

Mr. Jaureguy: If you are asking him—maybe I should not interrupt—but he didn't see him on the 13th of August.

Mr. Krause: Pardon me. The 18th of August. I am sorry. Was the 18th of August the first time that you saw any of the Winans, Mr. Parker?

A. To my recollection, yes.

Q. Well, you mean that you could have seen

(Testimony of Chet L. Parker.)

them prior to that without knowing who they [352] were? A. It is very possible.

Q. You just might have passed them on the street or something like that? A. Yes.

Q. But, as far as calling on any of them or being with them to be introduced to them, that was the first time you ever saw any of them, is that right?

A. As I remember, yes.

Q. At about what time of the day was that that you met Mr. Paul Winans?

A. Well, it seems like it was in the evening.

Q. It seems like it was in the evening?

A. Yes.

Q. About what time of the evening?

A. Well, I can't place it exactly as to the time.

Q. What time does the evening start, then, so that we know after what hour it would have been?

A. Well, anywhere from 3:00 o'clock to 7:00 o'clock.

Q. That is, the evening starts at 3:00 o'clock so this must have been between 3:00 and 7:00?

A. Yes, somewhere.

Q. What was his office located in?

A. Well, adjacent to a service station, I believe.

Q. Was it a part of a service station building?

A. I don't know whether it was part of it or attached to it. [353] I don't remember.

Q. Did you know where his home was?

A. No, I don't think so.

Q. You never were in his home?

A. I never was in Paul Winans' home, no.

(Testimony of Chet L. Parker.)

Q. Were you ever in the homes of any of the Winans? A. No.

Q. Then who was present besides Paul Winans and yourself when you got there?

A. Well, I think Stegmann was there, Walt Stegmann, and, I believe, Carl was with him, but I am not sure.

The Court: Who was the last person?

The Witness: Carl Stegmann.

The Court: Carl Stegmann?

The Witness: I believe he was there, but I am not sure.

Q. (By Mr. Krause): Walter Stegmann and Carl Stegmann? A. Yes

Q. Did anybody introduce you to Mr. Winans, to Paul Winans?

A. Well, I think probably Walt did.

Q. However, you had introduced yourself to him the day before over the telephone, had you not?

A. Well, I think, as I recollect, I called him the day before.

Q. Had you known of this letter that Mrs. Parker had written [354] regarding Stegmann's financial responsibility?

A. Well, she told me about receiving a letter. I think she made mention of it.

Q. She told you about having received the letter from the bank at Hood River.

A. Yes, as I remember.

Q. Did you read that letter that had come from the bank?

(Testimony of Chet L. Parker.)

A. No, I think the other day when I first came on here was the first time I had ever seen it.

Q. Did you read the letter that your wife wrote prior to your seeing it on the witness stand?

A. I think that is the first time I ever saw that letter.

Q. You were taking an assignment of an option that was in writing, was it not? A. Yes.

Q. There was not anything to the deal except what was in that option, as you understood it, was there?

A. That is what I was getting, is the option.

Q. Did you, before you bought the option or took an assignment of it, read it through?

A. Yes.

Q. Did you find in it that you were going to receive the right, title and interest of the sellers?

A. That is not exactly the way I remember it.

Q. That is not the way you remember it? [355]

A. Well, not in exactly that minuteness. I was to——

Q. You know the meaning of the words, "right, title and interest," do you, Mr. Parker?

A. Well, not exactly, no.

Q. Did you take the option to any person to have it explained to you before you took the assignment?

A. No.

Q. You have been accustomed to hiring lawyers, though, to explain the meaning of documents to you, have you? A. No more often than I have to.

Q. Well, I am sure you do not go there oftener

(Testimony of Chet L. Parker.)

than you have to, but you have taken instruments to them to have them explained to you, have you?

A. Well, not very frequently, no.

Q. I just asked you whether you had done it at all, Mr. Parker?

A. Well, I don't even remember of ever having, other than Mr. Jaureguy maybe, explain any instruments to me, or mortgages, as I recall them.

Q. When you went to the Marsh brothers after these difficulties had arisen regarding the title, you did not show them the option that you had and ask them to tell you what you were entitled to get under that?

A. Well, I showed them the option along with a lot of other things, as I remember. [356]

Q. You had employed, I think you said, Mr. Abraham at Hood River prior to this occasion?

A. Well, I was in—he had something to do with a deal on a dump, on a log dump, and I don't think I employed him, but he was the attorney for—I think maybe I paid him half the fee, I don't know. I wanted the other fellow to pay all of it. I don't remember whether he finally got half of the fee out of me or not.

Q. In April of 1951 you purchased a log dump up at Hood River, had you?

A. In April, 1950.

Q. 1951?

A. I don't remember what month it was, but I think that is probably correct.

(Testimony of Chet L. Parker.)

Q. How did you happen to buy that?

A. Well, I don't know whether I bought it or not. I had an agreement on it where I furnished the boom sticks for some kind of a deal, and that would give me a pocket or two. That resulted from John Marsh that had some timber to sell to me in Hood River County and whatever county is north-east of there. I forget what it is.

Q. Wasco County? A. Yes.

Q. Did you ever use the log dump for dumping any logs there after purchasing it? [357]

A. I don't believe so.

Q. Did you say that you just had a contract to buy it or that you bought?

A. I don't think I purchased. I didn't get any deed to it, to the—if you get deeds to the one you buy, why, I didn't get a deed for it. I had an agreement or something, as I remember.

Q. In your 1951 return it says, "Hood River log dump site, 4-25-51," at the cost of \$1500. Did you buy the site, or did you just get some sort of an agreement whereby you could use it?

A. Well, I didn't purchase it. I didn't get a deed for it, but I did spend that amount of money on the dump. I think we had to furnish the boom sticks and for which we could get the privilege of using a pocket or two there to dump logs.

Q. That was some months before you purchased the Lost Lake property? A. Yes.

Q. That you bought the dump? A. Yes.

Q. Apparently it was only a right to use it,

(Testimony of Chet L. Parker.)

and you furnished some of the equipment to be used in the log dump; is that right?

A. Well, I don't think equipment; I think it was boom sticks. [358]

Q. Well, boom sticks are things that you use in a log dump, aren't they?

A. Making up a pocket, yes.

Q. At the time you acquired that log dump did you have any timber in view up there in Hood River or Wasco Counties? A. Yes.

Q. What timber did you have in view?

A. The timber that John Marsh represented that he owned.

Q. That was in Wasco County, the John Marsh timber?

A. Well, he said he owned some in both counties.

Q. Did you go to look at it? A. Yes.

Q. You made no agreement with him to buy it, however? A. Well, I didn't get time to.

Q. Had you been up in the Lost Lake prior to, say, the 13th of August, 1951?

A. Yes, I would say possibly so.

Q. You had been up there?

A. I should think so, yes. I was looking at some timber this side of Lost Lake that this John Marsh purported to own.

Q. Do you know where, approximately, where the Mt. Hood Forest Reserve was?

A. I think I do.

Q. This property that you were looking at

(Testimony of Chet L. Parker.)

owned by John [359] Marsh, that was not in the Reserve, I take it?

A. Well, I don't know whether it was in the Reserve or outside the Reserve. I am not sure.

Q. I would like to have you return now to this 18th of August. In the telephone conversation with Mr. Paul Winans on the 17th, the day before your meeting up there, was anything said regarding the title at that time? A. Not that I remember.

Q. On the 18th after you had been, had met with Mr. Winans there, and you think Walter Stegmann was there and Walter Stegmann's brother?

A. Well, I am sure Walter Stegmann was there, and I think his brother was there.

Q. Just tell us exactly what Mr. Paul Winans said at that time?

A. Well, as I remember, either I introduced myself or Mr. Stegmann introduced me, and I informed him from then on he would be dealing with me on this deal, this transaction.

Q. I beg your pardon?

A. On this deal, this transaction.

Q. Yes?

A. And I did ask him in the option, I did notice where—whether he was going—I wanted to know about the title, whether I was going to get an abstract or title insurance. I didn't [360] notice in there making mention what kind of a title he was going to give me, and he said he would give me an abstract if I wanted it, and I told him I wanted a title insurance policy, and he said if I wanted a

(Testimony of Chet L. Parker.)

title insurance policy I would have to pay for it, that he was not going to pay for any, and it didn't call for him to give any. That is about the extent, as I remember. We made arrangements that Mr. Stegmann was going to do the surveying on the lake properties, I believe, that night, but I am not sure about it, as I remember.

Q. All right. Is there anything else that Mr. Paul Winans said at that time besides what you have told us?

A. Well, he said he had a policy on it, on the property, of \$8,000.

Q. Which you already knew when he told you that?

A. Well, if my information was correct, I knew it.

Q. But the title company had so told you that there was an \$8,000 policy?

A. Now I am not sure they told me or I happened to see it when they pulled the file out.

Q. At any rate, you knew of an \$8,000 policy on this property before you talked to Paul Winans?

A. Well, I thought there was, anyhow.

Q. What else did Paul Winans say?

A. That is about all that I remember of the discussion. [361]

Q. What was the next occasion when you saw Mr. Paul Winans or any of the Winans?

A. Well, if I am going to give just from memory, why, I couldn't tell you, but if I could read this thing maybe I could tell you.

(Testimony of Chet L. Parker.)

Q. That is your diary? A. Yes.

Q. Why, certainly, use it if you like.

(Witness thereupon consults exhibit.)

A. Well, without reading it real careful, I think it was possibly on August 31 of 1951.

Q. August 31st?

A. Without reading it really careful here.

Q. Tell us where and under what circumstances you met any of the Winans on the 31st of August?

A. Well, Walt was going to go up and survey the lines, and we were supposed to help.

Q. Who is "We"?

A. Oh, Paul and I and Ross and my son. As I remember, we went up to the lake, and I believe in my car, but I am not sure whose car it was. It possibly was mine, because most people want to wear out mine instead of theirs, and we worked that day.

Q. What did you do?

A. Well, we was surveying, cutting brush. [362]

Q. What were you surveying?

A. Well, I really don't know. We were supposed to be surveying some land, I guess.

Q. I assume that, but were you trying to survey the 40-acre tract, or were you surveying some part of the entire tract?

A. We was working next to the lake. As I remember, Mr. Stegmann started at the edge of the lake, and we kept running funny lines around trying— as far as I was concerned, I wanted all the

(Testimony of Chet L. Parker.)

timber. I didn't care about anything else, but I wanted the trees.

Q. What surveying equipment did you have with you?

A. I don't know as I know the names for them. A compass, I had a compass and something to measure with.

Q. You mean to measure distance or length?

A. I guess that would be the same thing.

Q. Was it a tape measure?

A. Well, it was a steel, steel tape.

Q. A steel tape? A. Yes.

Q. Did they call it a chain?

A. I don't know as anyone ever called it.

Q. What other equipment—if you do not know the name of it, describe it—did you have there at the time of this survey?

A. Well, that is all there was.

Q. That is all? [363]

A. Other than cork (sic) boots.

Q. You had cork boots on?

A. I believe I did.

Q. To what extent did you participate in this survey?

A. I would say just about even with everyone else, maybe a less amount for I was somewhat lazy that day.

Q. What did you do? Did you carry the compass in order to determine your direction? Did you hang on to one end of the tape while you were running out distances or measurements, or what did you do?

(Testimony of Chet L. Parker.)

A. To start in with, Mr. Stegmann set the compass up on a stake or a stick or something, and then I was to sight through, and if they got some brush on them I was to tell, to wave my hand to the right, and they was supposed to go to the right, and, to the left, they was supposed to go to the left, and so he paced out the distances of the property, and if he didn't sight everything, why, he would come back and change it, and we would do it all over again. I remember that because we seemed to do lots all over. We practically sliced all the trees up there off trying to find out where we was. Then I sliced a little brush, not very much, as little as possible, that is.

Q. Did you also hang on to one end of the tape while measurements were being made?

A. I could have, maybe both ends; I don't [364] know.

Q. You would not hold both ends at one time, would you, while you were doing that?

A. Well, rolling it up or something, I have done it. I don't know.

Q. Was there anything said by Mr. Ross Winans or Paul Winans regarding title to any part of that property that you were working on?

A. To me?

Q. Well, to you or in your presence?

A. Not that I heard, no.

Q. You were, during all of your surveying operations were you on the so-called 14 acres or on the 40 acres or say the 25-acre tract or the 40-acre

(Testimony of Chet L. Parker.)

tract? A. I believe on both of them.

Q. You think you were on both of them?

A. I believe so, but I am not sure about that.

Q. Was there to be a reservation of any part of the 40-acre tract as well as a part of the 25-acre tract?

A. As I remember, Mr. Winans thought he might want all of the creek, and the creek, as I remember, ran into this back 40, I always call it. We went up there to agree on it or disagree on it. It seemed like we mostly disagreed, and he wanted Walt to run a line down through to determine where and how many acres would be involved, if this went there or if it went there or wherever it might go, so, therefore, I [365] think we were on possibly both of them.

Q. Did you actually survey off any part of the 40-acre tract or a portion that was finally set aside and reserved by Winans, was that all part of the 25-acre tract?

A. I think the one that finally was reserved was part of the 25 or 23-acre tract, yes, but I don't think we made any final survey. I don't know what a final survey would be anyway so no use trying to say whether we made a final one or not.

Q. Between the 18th day of August and the—was it the 30th that you said just now?

A. Well, it seems to be here the 31st; I don't know.

Q. The 31st, yes. Between those two dates you do not recall seeing any of the Winans at all?

(Testimony of Chet L. Parker.)

A. I don't recall it.

Q. Do you recall any conversation with any of them in that intermediate period?

A. In person, you mean?

Q. Yes; well, that you talked to them or heard them talk? A. Not that I remember.

Q. On this 31st, then, you say that there was no discussion, nothing said by the Winans regarding the title? A. That I heard?

Q. Well, of course, that you heard. Did you meet with Paul Winans or any of the Winans on any subsequent occasion before [366] the deal was finally closed?

A. What does "subsequent" mean?

Q. Afterwords. You have already said that——

A. Yes, I did. I did.

Q. Am I right so far, the only times you had a chance to talk to any of them was on the 18th of August, and on the 31st of August? After the 31st of August did you meet with any one of them again and hear them say anything?

A. Well, yes, again between the 13th and the 31st, referring to any person, talking right to them like you and I. Then after that my diary indicates that I saw him on September 4, 1951.

Q. Saw Paul Winans? A. Yes.

Q. Was he the only one you saw on that date of the Winans? A. I believe I saw all of them.

Q. You saw all of them?

A. No, I didn't see them all because I don't

(Testimony of Chet L. Parker.)

know them all. I suppose, I think I saw Ross, but I am not sure about that.

Q. Where did you see——

A. Pardon me?

Q. Where did you see Paul and Ross?

A. At their office there, as I remember it.

Q. This same little service station affair?

A. Well, yes. [367]

Q. Not in the home of one of the Winans?

A. No, I have never been in the home of any of the Winans.

Q. Was that in the daytime or in the evening that you saw them on the 4th of September?

A. No, it was in the daytime.

Q. Daytime. You had some conversation with them?

A. A limited amount.

Q. What, if anything, did either one of them say regarding the title to the Lost Lake property?

A. Well, I don't think that they, either one of them, said anything about the title. Ross Winans didn't have anything to say about any of the title that I remember at all.

Q. Ross had nothing to say about it?

A. Well, that is right.

Q. Paul is the only one with whom you discussed this thing?

A. Well, evidently, yes; that is, concerning the properties.

Q. Then on the 4th there was no discussion regarding the title. What discussion, if any, did you have with any of them on any date subsequent to the 4th, after the 4th of September?

(Testimony of Chet L. Parker.)

A. Now, again we are talking about conversation, I had conversation with them? We are not talking about——

Q. What other kind could you have with them?

A. Well, I could have conversation over the telephone, could I not? [368]

Q. Well, at the moment we were confining ourselves where you were in the presence of one of the Winans. Just disregard the telephone and we will get to that in a moment.

A. Okeh. No, I don't remember when I saw him again.

Q. Prior to the closing of the deal and the delivery of the deed and the payment of the money?

A. Here again I am not going by memory. I am reading this thing here.

Q. All right, sir.

A. Because I could have seen him two or three times, and I would not remember. I might have seen him on September 8, 1951. I don't know.

Q. What makes you say you might have met Paul Winans on that date, on the 8th of September?

A. Well, I left Lost Lake, and I went right by his house or his garage there, or office, whatever you would call it, and I might have seen him that day.

Q. Did you have any discussion with him regarding the title to the Lost Lake property on that day?

A. No, not that I remember anything about.

Q. All right. Now, in any telephone——

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Pardon the interruption. If you will pardon me the interruption?

Mr. Krause: Yes, go ahead.

Mr. Jaureguy: As I understand it, he does not remember [369] seeing him, and then in this last question he prompted him the date.

Mr. Krause: Whether he might have stopped there, Mr. Jaureguy. I just asked him if he might have.

The Court: Just for my information, on what day was the \$4,000 paid?

Mr. Krause: 18th of August.

Mr. Jaureguy: 18th of August.

Mr. Lindsay: 18th of August.

The Court: That was the first day that Mr. Parker thought he saw Mr. Paul Winans?

Mr. Jaureguy: Yes.

Mr. Krause: Any of the Winans.

The Court: 18th of August.

Q. (By Mr. Krause): In any telephone conversation with Mr. Paul Winans or any other Winans was there any discussion regarding title to the lost Lake property? A. I don't—

Q. The dates I am concerned with, Mr. Parker, are from the 17th of August on because that is the first time you said you talked to Paul Winans or any of the Winans. From the 17th of August on to the time that you got your deed and paid your money was there—did you have any telephone conversation with Paul Winans or any of the Winans

(Testimony of Chet L. Parker.)

relating to the ownership, the title of the Lost Lake property? [370]

A. No, I don't remember of having anything to do with specifically the title of the property, any more discussion, other than that night of the 18th, if that was the night I was there, which I presume it was.

Q. Yes, the night of the 18th. Have you told us everything that Paul Winans said on that night regarding the title, is that right?

A. Well, I am not guaranteeing he didn't say another word or two, but that it as I remember it.

Q. You have given us to the best of your recollection everything he said on that night regarding title to the property? A. Yes.

Q. Mr. Parker, did you on one of the—the first occasion when you were introduced to Mr. Paul Winans were you introduced to him as a surveyor?

A. Not that I remember anything about. I would remember it if I heard it.

Q. Who introduced you to Paul Winans?

A. Well, I believe it was Mr. Stegmann, but I might have introduced myself.

Q. As a matter of fact, having introduced yourself the night before, you really didn't need an introduction, did you?

A. When are we talking about here?

Q. If you introduced yourself on the night of the 17th, as I understand it? [371]

A. The telephone, I don't—I didn't in person, I

(Testimony of Chet L. Parker.)

didn't say, "Well, here, I am Mr. Parker," on the night of the 17th. I mean——

Q. You told him who you were?

A. Yes, but I don't want to get into an argument here. I am supposed to answer the questions. I am sorry.

Q. I don't want to confuse you, either, but your testimony was, was it not, that the first time you met Paul Winans was on the 18th in the evening, after 3:00 p.m., anyway?

A. Yes, that is right.

Q. Now, on that occasion you were introduced to him?

A. Well, I either introduced myself or I was introduced.

Q. Or you introduced yourself? A. Yes.

Q. Had you prior to the time that you met Stegmann and Paul and Ross and your son gone up to the lake—had there been any survey done of this reserved area by any other person that you know of?

A. Of the reserved area?

Q. Yes, that is the only thing you had to survey, was the reserved area, wasn't it, Mr. Parker?

A. Well, I really—that is what we had—that was what they were supposed to survey, but it seems like they had to do some other surveying to accomplish that surveying. Something else had to do with that particular part of it, an earlier [372] arrangement.

Q. My question was, did you know whether any other person had been employed to do any survey-

(Testimony of Chet L. Parker.)

ing there prior to the time that you and Stegmann and the two Winans and your son went up there to do what surveying you participated in?

A. Well, I think Mr. Stegmann went up and did some surveying on the property.

Q. You think Stegmann did some?

A. Well, I think so.

Q. Did you know of your own knowledge whether Mr. Winans had employed a surveyor to endeavor to measure off the reserved area?

A. I learned that he—I don't know when I learned it, but I learned that he hired a surveyor to represent him himself.

Q. You met him, too, didn't you?

A. What, the surveyor?

Q. Yes.

A. Well, I am not sure where it—I am not sure, but if we are referring to up to the property, no.

Q. You did not meet him on the property?

A. No.

Q. Do you know what the name was of that surveyor that Mr. Winans had employed?

A. I am not sure, but it seems like it was Haines or Hines or something like that. [373]

Q. You have got his name in your minutes enough times, Mr. Parker.

A. Can I read them so I can look at it?

Q. Certainly you can. You have got the name of Hines in there. I believe his proper name is Haines.

A. I guess I made an error then.

(Testimony of Chet L. Parker.)

Q. But, at any rate, you knew of this surveyor that Paul Winans had employed?

A. Apparently. I didn't know his correct name.

Mr. Jaureguy: Pardon me. I just want the record straight. I only saw that name on one occasion in the minutes.

Mr. Krause: Well, I may be wrong on that, too. I thought I saw it on at least two or three.

Mr. Jaureguy: I believe that is enough, but the tone of your voice indicated many times.

Mr. Krause: Well, I will modify the tone of my voice.

Mr. Jaureguy: That is better.

The Court: Proceed.

Q. (By Mr. Krause): At any rate, you and these other four people—that is, your son and the two Winans and Stegmann—were up there surveying on one occasion, were you not?

A. Yes, I think that is all that was present.

Q. That is all that were present?

A. I think that is all that were present.

Q. Mr. Parker, isn't it a fact that upon that occasion Paul Winans [374] told you of the claim of the United States against the 40-acre tract?

A. I think I have answered that already. He did not.

Q. When did you answer it?

A. Just two or three minutes ago.

The Court: He answered it in connection with the examination of Mr. Strayer.

Mr. Jaureguy: I think the witness is correct;

(Testimony of Chet L. Parker.)

however, it was longer than two or three minutes ago.

Mr. Krause: Certainly I didn't ask any such question, I will guarantee that.

Mr. Jaureguy: You asked him whether any statement was made regarding the ownership of Paul Winans, regarding the ownership of the property.

Q. (By Mr. Krause): At any rate, you are sure of that, Mr. Parker, that while you men were up there engaged in this surveying operation Mr. Paul Winans did not tell you that the United States claimed ownership of the 40-acre tract?

A. No, I remember—if he did, I certainly would have remembered it.

Mr. Jaureguy: Could I get that question again?

(Question read.)

Mr. Jaureguy: I am not sure that that "No" means "Yes" or "Yes" means "No." That is not clear to me. That is, it is clear when I hear it, but when you read it, it reads this [375] way: "Are you sure he didn't?" And the answer is: "No," which means he is not sure. Then he proceeds to say he is sure.

Mr. Krause: I will stipulate to say he did not say it.

Mr. Jaureguy: All right.

Q. (By Mr. Krause): Did Mr. Paul Winans upon that same occasion——

(Testimony of Chet L. Parker.)

The Court: You do not want to stipulate that Mr. Winans never said that; you only stipulate that this answer is to be construed as a statement that he never heard Mr. Winans say that?

Mr. Jaureguy: Oh, I didn't understand it.

Mr. Krause: That is correct.

Q. Mr. Parker, did Mr. Paul Winans on that same occasion when you five men were up there on the property engaged in surveying the reserved area tell you that a title policy which he had had on the 40-acre tract as well as the 25-acre tract, that he had been paid \$3,000 in settlement because of the Government's claim against the 40-acre tract?

A. No, I never heard anything about any \$3,000 settlement.

Q. Did you hear anything about any kind of a settlement of that policy?

A. No, I never heard anything about a settlement of any policy.

Q. Mr. Parker, just following the time that you received [376] notice and that the title company had some notice of the claim of the Forest Service to those 40 acres did you have any conversation with any representatives of the Title and Trust Company concerning the title to the Lost Lake property?

A. Either I am awful dumb, but I don't know which meeting you mean, whether it's—oh, I just don't know what you mean.

(Testimony of Chet L. Parker.)

Q. First of all, did you have any meetings with them in their Portland office?

A. At any time?

Q. Following the time that you had notice that the Forest Service claimed those 40 acres?

A. Well, I guess I really had two notices. Mr. Miller told me once, and I guess I got a letter another time.

Q. Then you got a letter?

A. Yes, I recall it.

Q. Well, after the first notice or after the second notice did you meet with any representatives of the Title and Trust Company in their Portland office? A. Yes.

Q. Can you tell us who was present on that occasion?

A. Well, my wife—let's see, my wife and Mr. Alstadt, my attorney, Mr. Frank Marsh, and Mr. Buell. There might have been another person there. I am not sure.

Q. Can you give us the approximate date of that meeting? A. If I read it, I could maybe. [377]

Q. Please refer to your diary any time you like.

Mr. Jaureguy: Could I just prompt him just a little bit?

Mr. Krause: Yes.

Mr. Jaureguy: If you look at your photostat, in other words, 115A, that is the subsequent portion of it.

(Testimony of Chet L. Parker.)

The Court: What is the date?

Mr. Jaureguy: October 12th, according to the diary.

The Court: All right. October 12th.

Q. (By Mr. Krause): Is that the first meeting that you had with the representatives of the title company? A. I don't think it was, no.

Q. But you had had no earlier meeting with them in their, at the Fourth Street place of business in their Portland office?

A. I don't believe I ever met with them at the Fourth Street address.

Q. Do you know where the Title and Trust Company office is here in Portland?

A. Well, I think so, yes.

Q. Didn't you pick up a title report there?

A. Yes; yes, I did.

Q. That is the place that I refer to. Did you ever have any meeting with them there?

A. No—well, I picked up the policy, but I didn't have any [378] meeting.

Q. I referred to the time after you had received notice that the Forest Service claimed this property?

A. No, I don't remember meeting them there at Fourth Street.

Q. All of your meetings with them were out there at McMinnville, then; is that correct?

A. No; no, I met them in Portland once.

Q. You met them in Portland but not in the Title and Trust Company office?

The Court: Where did you meet them?

(Testimony of Chet L. Parker.)

The Witness: My attorney's office up in the building.

The Court: Mr. Buell's office?

The Witness: Mr. Buell's office, Electric Building.

Q. (By Mr. Krause): Was that the last meeting that you had with them, or, that is, were these meetings that you held with these representatives in McMinnville before the one in the Electric Building or afterwards?

A. I think they were before.

Q. Was this meeting in Mr. Buell's office the last one that you had with the officials of the title company? A. As I remember, it was.

Q. In the meetings at McMinnville there were—do you remember how many meetings there were at McMinnville at Mr. Marsh's office?

A. When I was present? [379]

Q. Yes, when you were present?

A. No, I do not. I suppose two or three.

Q. There were two anyway, weren't there?

A. I think there was two or three.

Q. That is, where there were representatives of the title company present?

A. Yes, possibly all the title company, I didn't know.

Q. Well, yes, those men that you have mentioned; Mr. Alstadt, Mr. Buell, and on one occasion was Mr. Dwyer there, too?

A. I don't know for sure, but it seems like there was another man there.

(Testimony of Chet L. Parker.)

Q. There was always some person representing you, either Francis Marsh or Bill Dashrey or both of them?

A. Yes, I think Gene Marsh might have something to do with it, too; I don't know.

Q. Or Gene, too. What did you tell them during those meetings at McMinnville as to how many times you had seen Mr. Paul Winans to talk to?

A. Well, I don't remember telling them how many times I had seen him.

Q. You didn't tell them that you had only met Paul Winans upon one occasion prior to the time that the deal was completed?

A. No, I don't remember making that statement. I am satisfied—only on one occasion, was that your question? [380]

Q. Yes, only on one occasion?

A. I might have made mention on one occasion that I saw him but not the only one occasion.

Q. All right. Now, what did you tell them regarding the representations that Paul Winans or any Winans had made to you regarding the title to the Lost Lake property and particularly the 40 acres?

A. Well, when I refer to it, I refer to it as one piece of property.

Q. All right.

A. About the only thing that I remember saying that Mr. Winans said he had a title policy on it, and that is all I——

(Testimony of Chet L. Parker.)

Q. That he had a title policy? A. Yes.

Q. That is the same policy that you saw or were told about by the title company and the one that Paul told you about?

A. Well, I never saw Paul's. He hunted for it.

Q. Oh, you did not see Paul's policy. Is that, as near as you can now recall, everything that you told them that Paul Winans had told you?

A. It seems like I told them that he said he had a good title to it. He had told me he had a good title.

Q. A good title?

A. I am not sure about that.

Q. Do you know what a marketable title is, Mr. Parker? [381] A. No, I sure don't now.

Q. Did you know at that time what a marketable title was? A. I thought I knew then.

Q. You thought you did. Well, did you use the term "marketable" in connection with describing the kind of a title that a person had? I mean, were you accustomed to using that word?

A. "Marketable," well, I possibly do. I don't know what it means. I guess if you market something, why, that would be——

Q. At any rate, your best recollection is that you told them that he had—he said—he told you he had a title policy and that possibly he said he had a good title; is that right?

A. I think that I might have told them that.

Q. You might have told them. Have you got your testimony up there now?

(Testimony of Chet L. Parker.)

A. I got a desk full of it. I don't know what.

Q. Would you turn to Page 254 to refresh your memory?

The Court: What question, Mr. Krause?

Mr. Krause: The first question on the page, on Page 254: "Did you ever tell any of these persons Mr. Buell has named as being present at any of these meetings that Paul Winans told you he had a good and marketable title to this property which he was selling you?"

"A. I remember saying that, yes."

Did you so testify at that time? [382]

A. Yes.

Q. All right, the next one:

"Q. Did you also say that Paul Winans had never told you anything about the Government making a claim to the back 40 acres?"

And your answer was:

"A. I don't know whether I told him or not."

Was that your answer to that question?

A. That is what I answered.

Q. "Q. I am not asking you about that. I am asking you what you told them."

Your answer:

"A. Well, I don't remember of telling them that.

"Q. Could you have told them that?"

"A. I possibly could have."

Now, taking the next question:

"Q. Did you tell them that Paul Winans had never told you anything about a policy of title insurance he had on that property which had been

(Testimony of Chet L. Parker.)

paid off by reason of the Government claiming ownership of the back 40 acres?"

Was that question asked you, and did you answer that: "I don't know that I told them that. I don't remember [383] of telling them that. I probably did"?

A. Yes, I probably answered it. I——

The Court: Is that clarified in the next question? I do not understand that question myself.

Q. (By Mr. Krause): "Didn't they ask you the question, 'Well, didn't Paul Winans tell you that he had some title insurance on this property which had been settled because of the Government claim?' "

Your answer is: "Now we are changing this."

The next question:

"Q. No, I am still talking about the conversation between you and representatives of Title and Trust Company, the plaintiff in this case. I am trying to find just what you told them with reference to what Winans did or did not tell you."

Your answer is:

"A. Well, I don't remember all the conversation."

Now, the next question:

"Q. Did the Title and Trust Company ever ask you to warrant in writing that Paul Winans told you he had a good and marketable title to the back 40 acres?"

Your answer is:

"A. Not that I remember."

(Testimony of Chet L. Parker.)

Do you recall that question and answer, Mr. Parker?

A. Well, not vividly, but I suppose I answered it that way. [384] It is written down that way.

Q. Mr. Parker, did you tell them upon any of those occasions when you met with them either in Mr. Marsh's office or in Mr. Buell's office that the Winans had misrepresented anything to you?

A. I don't remember of saying that.

Q. When you bought this property, what did you rely upon, Mr. Parker?

A. Money I had in the bank.

Q. That is what you used to buy it?

A. Yes, that is what I mean.

The Court: He means did you rely on the title report, or did you rely on Mr. Winans' statement, or did you rely on both of them?

The Witness: Well, more or less both of them, but the title report would be the—before I paid for the property, why, I relied on the title report.

Q. (By Mr. Krause): Let us find out what you mean by "more or less upon both of them."

A. Well, they both checked.

Q. You mean the title report showed a good title of what Winans said about the title?

A. Well, the \$8,000 deal checked.

Q. That is, he had a title policy, too?

A. Yes, it both checked to the right [385] amount.

The Court: I think you did not hear that last statement. Mr. Parker, did you say at the time you

(Testimony of Chet L. Parker.)

paid the money you relied on Title and Trust's report, or did you rely on both the statements?

A. At that time I relied on Title and Trust. I am talking about the ninety-some-odd thousand dollar one, of course, when I say "Paid."

Q. (By Mr. Krause): I cannot hear that, Mr. Parker.

A. I am talking about the large sum of money when I say that.

Q. You had not paid anything yourself on this deal until the very last payment, had you?

A. Well, I gave Mr. Stegmann a \$25,000 check.

Q. At any rate, that is the same check that was not cashed until the 20th of September?

A. That's right. That is when we redeposited it.

Q. When you redeposited it?

A. Yes, or my wife did, rather.

Q. But as far as the thousand and four thousand were concerned, Stegmann owed you that money at that time, did he?

A. That is right.

Q. That had been charged against his \$10,000 drawing account?

A. Yes.

Q. By the way, the Court several times in asking you questions referred to an account that Stegmann had in The First [386] National at McMinnville. Do you recall that? Well, in any event, did Stegmann have an account in The First National Bank at McMinnville?

A. I think I have answered that. I don't know whether he did or he didn't have.

(Testimony of Chet L. Parker.)

Q. Oh, you said you did not know whether he had it?

A. I don't know whether he did or he didn't.

Q. These checks that he put in there, at any rate, were charged against your account; that is, the Phillips Construction Company account?

A. Well, I think they was charged against both accounts, some of them, but I am not sure. I know some of them had went into that, some of them were charged against Phillips.

Q. What is the lay of the land with respect to the 25-acre tract and the 40-acre tract? Do you have to cross the 40 acres to get to the 25, or is the reverse true?

A. Well, I suppose it would depend on which side of the property you was on. If you was on the north side, you might have to go across that. If you was on the south side, you would have to go back across the other.

Q. I did not assume you were flying in, but going in by the way, the way you did, driving in by the roadway, on which portion of this 65 acres do you first get onto, then?

A. Well, if you drive in and park your car and walk about a half a mile, then you come into between the meandering [387] corner, I think they call it, and quarter-corner.

Q. That is, you would then be on the 25-acre tract, would you? A. Yes.

Q. I see. A. Or that lot there on the lake.

Q. If you went farther, in what direction would

(Testimony of Chet L. Parker.)

you have to go in order to get onto the 40-acre tract?

A. I suppose you would have to go about 800 feet, something like that, more. I guess you could go in two or three directions to get onto it from the time you entered the property. Generally speaking, I suppose west, I believe—if I could see a map, I will know.

Q. You would have to see a map in order to tell?

A. To be sure, yes.

Q. At any rate, coming in from the roadway and along the trail that you have just told about, you would first get onto the 25-acre tract, would you not?

A. Yes.

Q. These 14 acres that you have there to which you have a good title are only worth about \$10 an acre, are they not?

A. Well, to start in with, I don't know whether I got a good title or not, but I presume I have.

Q. You do not know whether your title to the 14 acres is good?

A. No, I don't know that it is good. [388]

Q. You do not, but has anybody ever told you that there was any question about your title to the 14 acres?

A. No.

Q. Nobody has?

A. No, they have not told me. They haven't told me one way or the other.

Q. Assuming for the moment that the title is perfectly good, those 14 acres have no value in excess of \$10 an acre, do they?

(Testimony of Chet L. Parker.)

A. Not to me, no.

Q. How much timber was there on that 14 acres, according to your own cruise?

A. I think about 26 to 28 per cent of 6,000,000 feet.

Q. It would be at least a quarter of 6,000,000 feet, then, 26 or 28 per cent?

A. Something like that.

Q. That would be about a million and a half of timber?

A. I don't think it would be quite that much.

Q. Not quite that much?

A. I don't believe so.

Q. Still it is only worth \$140, the 14 acres?

A. That is right, to me, that is.

Q. You would be prepared to sell it now, would you, for \$140 as soon as we leave here?

A. Yes; you pay for the instruments, or I suppose you would [389] want a title policy so you will have to pay for that. I will sell it to you as soon as we leave.

The Court: We are not going to hold you to that bargain, Mr. Parker.

The Witness: It is perfectly all right. He can buy it.

Q. (By Mr. Krause): That is the figure that you put into your tax return, isn't it, \$10 an acre?

A. Yes.

Q. Why is it of such low value?

(Testimony of Chet L. Parker.)

A. Well, I don't think the public would let me log it now with just such a small amount on there.

Q. The public will not let you log it?

A. I am doubtful if they would.

Q. Who are the public, Mr. Parker?

A. You and I and everyone else who lives in the United States.

Q. I did not know that we had anything to say about whether you logged off your own land, but——

A. Well, I have to have a right-of-way into this property, and it is—to build a road in for this small amount of timber and to go where the road would have to go if you was going to log this portion only would destroy more public timber than you would ever receive off of it, unless the government would allow you to go way around, and then you would destroy, well—it would be prohibitive to put the road in, but if you would have the 40 acres you would be back behind this piece away [390] from the lake.

Q. You would have to get a right-of-way over forest reserve property in order to get the logs out from this 14-acre tract? A. Yes.

Q. That is correct; and, therefore, you think it is substantially of no value?

A. That is right. Well, \$140.

Q. Yes, well, it has no value as a recreational site either, I suppose?

A. It certainly would not have. You got to get running water. You drive your car to running

(Testimony of Chet L. Parker.)

water. Your wood is chopped and the place to camp free. Then why have a place you have to walk a half-mile to get to and then pack your wood, chop your own wood? To me it would have no recreational value.

Q. Mr. Parker, who is this Paul Wardell that you drove up to Hood River with on one occasion?

A. Oh, he is the son of a dealer.

Q. A what? A. A dealer.

Q. What kind of a dealer?

A. Well, just a dealer in everything.

Q. Where does he live?

A. The son or the father?

Q. Well, the one you took up to Hood River. I don't know [391] whether he is the son or not.

A. Well, he lived right around Sheridan, Oregon.

Q. How long had you known him before you took him up there? A. Approximately?

Q. Yes, approximately.

A. I don't really, I can't place it exactly. It is quite a while, anyway.

Q. You had known him for a number of years before 1951, anyway? A. Yes.

Q. Was he a friend of yours?

A. Well, I would not say a friend.

Q. Had you had some business dealings with him?

A. Well, he was with his father, yes.

Q. You had had business dealings with his father? A. Yes.

(Testimony of Chet L. Parker.)

Q. Which one did you take to the lake, the father or the son?

A. I took the son because the father is dead.

Q. The father was dead at that time?

A. Yes.

Q. Was this—these dealings, of course, with the father had taken place before his decease, but did you have any dealings with the son, the one you took to Hood River, business deals of any sort, after the father's death? [392]

A. I might have.

Q. You cannot say for certain whether you did or didn't?

A. No.

Q. Did you know anything about his financial status? Did you know whether he had any money or didn't?

A. Oh, no, not exactly. The family was rumored to have a considerable amount of money.

Q. But you knew nothing about it personally?

A. No, they were pretty close-mouthed.

Q. His being brought up there to Hood River, was that at your instigation or Stegmann's?

A. Well, I think it was a little bit of both.

Q. Both of you?

A. Yes.

Q. Just tell us the circumstances under which Wardell was brought up there to Hood River.

A. Well, it had to do with this housing and irrigation project that Mr. Winans was engaging in at that time. I am quoting Mr. Winans, of course. I am relying on what he told me, that he was engaging in it. He wanted to get some group together

(Testimony of Chet L. Parker.)

that had more money to build, to get more money to build more homes and to get this pipe line run down to the homes.

Q. You had had some conversation with Paul Winans regarding this housing project and that Paul needed financing; is that right? [393]

A. I think there was some discussion of it, but I am not sure it was with me prior to that.

Q. Prior to the time that you took Wardell up?

A. Yes.

Q. Did I—on August 31, will you look at your diary again and see what it says there about your—well, I am mistaken about that. Your diary does not indicate that you had any conversation about the housing project with Paul Winans on the 31st of August when you went up there, the day you were surveying.

A. No.

Q. Do you, independently of your diary, recall any discussion with him about financing his housing deal?

A. Well, I think there was some discussion all right.

Q. There was. Did you suggest that you knew this man, Wardell, might be interested in such a project?

A. I don't know whether I suggested it to him or not myself.

Q. Winans did not know Wardell?

A. No, I think that Stegmann might have made the arrangements with Wardell or else with me, and

(Testimony of Chet L. Parker.)

then I made them with Wardell. I don't know which one of us did.

Q. You do not know, but both of you knew Wardell?

A. Well, presumably, yes; I knew him, certainly.

Q. You knew him, and you think that Stegmann knew him, too?

A. Well, I am sure Stegmann knew him. He didn't live far [394] from there.

Q. Both of you thought that he was a man who might be willing to finance Mr. Winans' housing project?

A. Of course, I wasn't too interested whether he financed his housing project and his pipe line or didn't.

Q. What is your best recollection as to whether you told him, told Paul, that you would put him in touch with someone who might be interested in financing it?

A. We are speaking about finding Winans or Mr. Paul Wardell?

Q. Paul Winans.

A. Well, I really don't—this is purely from memory, and I just certainly cannot remember whether Stegmann got in touch with Wardell. I know I took Wardell up there—or whether I got in touch with Wardell by Stegmann's request now, I am not sure of which it was.

Q. It was my recollection, Mr. Parker, that earlier you had said that you took Wardell up as a favor to Stegmann. As I remember, that is, that

(Testimony of Chet L. Parker.)

was what the deal was. You didn't—you had not told Paul Winans that you would find someone for him that would finance this deal?

A. Well, I certainly wasn't going to waste my time hunting anything for him.

Q. So all you had to do with that end of the thing was to Mr. Wardell up?

A. Yes, I didn't even pay any attention to what Mr. Winans [395] and Mr. Wardell said. In fact, I was—I deliberately didn't want anything to do with it.

Q. But it was important enough for you to make some notes in your diary about it?

A. Well, now, in reference to what I put in my diary, the importance of a thing apparently doesn't have anything to do with what I put in the diary.

Mr. Jaureguy: Well, I want to ask that that be read, what is in the diary, in view of Mr. Krause's statement that it indicates importance.

The Court: Well, what does the diary say?

Mr. Krause: You can turn to September 4th.

Mr. Jaureguy: That is the date I had in mind.

Mr. Krause: "Paul Wardell and I drove on to Hood River to see Paul Winans. Walt Stegmann and Paul Wardell are working out a deal on Winans' housing. I am having nothing to do with it. The two Pauls did a lot of talking, but I stayed outside and did not hear any of the conversation. Then I drove P. Wardell to Hood River and he checked the courthouse records and found that P. Winans at various times had judgments against him

(Testimony of Chet L. Parker.)

and he was not going to have anything to do with him at all. Then drove to Portland. Got home 8:00 a.m."

That was the notation you made regarding the visit of Wardell to Hood River?

A. That is correct. That is correct, that I made the notation. [396]

Q. Yes, and when you say in your notes here that you stayed outside, was that outside of the house or outside of the building?

A. It would be outside of his office.

Q. Outside of his office. That is, Wardell and Paul and Stegman were in this service station building?

A. How did Stegmann get mixed up in this now?

Q. Well, it says here in your notes, "Walt Stegmann and Paul Wardell are working out a deal on Winans' housing." I did not mix them up. Your notes say that in there.

A. How did that have anything to do with Mr. Stegmann being in his office in that statement, with Mr. Paul Wardell? That is what I do not understand. I am sorry.

Q. Oh, I am sorry. Then when you brought Wardell up there Stegmann was not there?

A. No, he was not in my presence at any time.

Q. Just you and Wardell and Winans were there that day, then?

A. There was two Winans, Paul and Ross Winans.

(Testimony of Chet L. Parker.)

Q. Paul and Ross, yes.

A. Now, when I brought him there, I don't know whether Ross was there, but sometime during that time Ross was there.

Q. Stegmann, as far as you recall, was not around?

A. I don't think Stegmann was around at all. I didn't see him that I remember.

Q. Do you have a station wagon, Mr. [397] Parker? A. No, I do not.

Q. In 1951 did you drive a station wagon up to the Lost Lake property at any time?

A. I had a station wagon then. I might have.

Q. You might have driven it up to the Lost Lake property?

A. Yes. I don't think it is called a station wagon, however. It is a Suburban I had, not a station wagon. There is quite a lot of difference between the two.

Q. You recall being up there at the Lost Lake property on September 7, 1951, don't you?

A. Not from memory. I could read my——

Q. Take a look at your diary again.

A. If the diary is right, which I presume it to be, why then, I recall being up at Lost Lake on the 9th month, 7th day, of 1951.

Q. You camped up there that night, the night of September 7, 1951, did you not? A. Yes.

Q. Do you recall meeting anybody up there at Lost Lake on that occasion, on that day?

A. Well, the lake was—the day before the night we stayed there? You see, we went there two days,

(Testimony of Chet L. Parker.)

two nights, and then the daytime; so you are speaking of the night before or when?

Q. You were there on September 7th and stayed there that night, were you not? [398]

A. Yes. I was there both on the day of the 7th and on the day of the 8th. Now, was that on the 7th are you referring to?

Q. I am asking you whether you met anybody up there on the 7th of September?

A. There was people there.

Q. There were people there?

A. Oh, hundreds of them. They was as thick as bears in the woods.

Q. Well, do you want us to take you literally now, Mr. Parker, that there were hundreds of people there?

A. Oh, there was lots of people there, as I remember.

Q. That was after Labor Day and after school had commenced most everywhere?

A. Well, I don't know when school commenced, but I know there was a lot of people there.

Q. Do you recall having any conversation with a man there regarding what you were doing up there? A. Yes, I believe I did.

Q. As to why you were up there at Lost Lake?

A. Yes, I think I had a discussion with quite a few people. What specific person do you—

Q. I just had in mind, and I may be wrong about it, on your testimony earlier you said you had no

(Testimony of Chet L. Parker.)

conversation with anybody up there on that day, I think. [399]

Mr. Strayer: What date is this?

Mr. Jaureguy: September 7th. I do not recall that testimony.

Mr. Krause: All right. I am asking him now whether he had any conversation with anybody up there at the lake as to why you were up there and what your business and occupation was.

The Court: Can you answer that, Mr. Parker?

The Witness: Well, it seems, it is kind of hazy in my mind. It seemed like there was a fellow stopped in a car. I didn't know his name, and he worked for the Government. It seems like we were discussing—it seems like I made mention that I was with the Engineers, with the Government at one time.

Q. (By Mr. Krause): You mentioned you were an engineer with the Government at one time?

A. I am not sure I did, but it seemed like I did. I worked out of the Terminal Sales Building in Portland. I think I made mention of that to him, but I am not sure.

Q. When was that that you were an engineer with the Government, Mr. Parker?

A. Oh, I believe it was, well, it was after I got back from Honolulu. I guess 1942; I believe it was 1942.

Q. For how long were you with them?

A. Oh, five months; five months I was with them. [400]

(Testimony of Chet L. Parker.)

Q. Where had you gotten your engineering training? A. I didn't get any.

Q. But, still, you were working for them as an engineer? A. That is what I said, yes.

Q. Did this gentleman introduce himself to you, tell you who he was, what his name was?

A. Well, the gentleman I am talking about was farther than from you and I. We must have been 60 or 70 feet from each other, and he was in his car with his motor running. I remember him stopping, hesitating there. I think I had my dog with me is the reason he stopped. He ran out across in front of him.

Q. You were not engaged at that time in working with a transit and surveying on the property on this 25-acre tract, were you?

A. No. I never had a transit in my hands in my life that I ever remember anything about.

Q. Well, now, let me just ask a final question on this. Isn't it a fact, Mr. Parker, that on September 7, 1951, while you were on the edge of Lost Lake on the 25-acre tract carrying a transit, you yourself carrying a transit, that you talked to a man whose name is Alva L. Day, and that you told him that you were an engineer running a meander line around the edge of the lake. Do you recall such a conversation with this gentleman? [401]

A. No, I don't, and, as I say again, that I did not have any transit in my hands.

Q. Of course, you did not tell him that you

(Testimony of Chet L. Parker.)

were an engineer lining a meander line around the lake?

A. I might have told him I was an engineer and worked for the Government at one time.

Q. Did you further tell him that you wanted to establish the difference between the former meander line when the water was lower? A. No, no.

Q. You had no such conversation?

A. Well, I don't remember the conversation. He made the conversation. He had a little bit to say about it, however.

Q. He did? A. Yes.

Q. You were discussing the meander line?

A. Yes.

Q. Well, now, was he 70 feet away from you at the time you were doing that?

A. Yes, he must have been at least 70 feet away from me.

Q. How could he have gotten his car over there? I thought you said he was sitting in his car.

A. He was sitting in his car, yes.

Q. Had he driven that car up to the 25-acre tract?

A. No; no, that is why he didn't see me carrying any transit [402] around because when I talked to him we was not on the 25-acre tract, and when I talked to him, if this is the man—I don't know whether it is, and I presume it is—then we was clear out in this camp grounds, and they have a main entrance road, and my family and myself and my equipment such as a car and camping stuff.

(Testimony of Chet L. Parker.)

Q. Didn't this man say to you that it was pretty wet to be working out with a transit at that time?

A. No, I don't remember the man saying anything about that.

Q. Did you tell this man anything about a deal involving the Winans property?

A. Not that I remember. My wife was with me at the time and standing beside me, and she and some woman was doing a little talking, and the woman was also in the car.

Q. Well, did you tell him that you were making a survey of the Winans property for someone else and would have to turn in a report?

A. No; when we talk about surveying, surveying things, I use that word sometimes, surveying, but not in the sense of being a surveyor, a civil engineer. Let us say I surveyed this building for its worth or something like that, and I could have possibly used that word in that connection. It is very commonly I use that word.

Q. Did you not also tell him at that time——

Mr. Jaureguy: Pardon me. He never did answer the [403] question.

Mr. Krause: Oh, pardon me.

Mr. Jaureguy: No, he did not answer the question.

(Question read.)

The Court: He answered that he sometimes uses the word "survey," but he didn't answer the full question.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: That is what I mean.

The Court: Did you tell him that you were doing it for someone else and would have to turn in a report?

The Witness: No.

Q. (By Mr. Krause): Did you also tell this man upon this occasion that the dam at its lowest level had raised the level of the lake? Did you tell him that?

A. No, I absolutely did not. That was in the conversation, however.

Q. That was in the conversation? A. Yes.

Q. About the level of the lake being raised?

A. I remember that distinctly. That is about the only distinct thing that I do remember about it.

Q. That he told you, then, that he was an engineer himself, didn't he?

A. I don't remember that he said he was an engineer.

Q. That he had to do with the construction of the dam on Lost Lake? You don't recall that [404] either?

A. It seems like he said something about——

Q. And that he disagreed with you about the level of the lake having been raised?

A. No, there wasn't any disagreement. He was telling me. I was listening. I was not telling him.

Q. In your testimony here in the court you have talked about the level of the lake having been raised, and, therefore, causing this waterfront to become swampy.

(Testimony of Chet L. Parker.)

A. Yes, that is the information this man gave me. I didn't give it to him. He gave it to me.

Q. Will you again turn to your deposition at Page 246 and start with the last question on the page in which you talk about this trip up there to Lost Lake. The first question is:

“Q. You camped up there just during the day?

“A. No, we stayed all night. It rained, by the way.”

Was that your question that you gave to that question? A. Apparently.

Q. Well, did you or didn't you, Mr. Parker?

A. I think I did. I don't know that I did.

Q. Well, is it a true statement?

A. Yes, it rained. I am sure about that.

Q. “Q. You don't recall getting into a discussion with [405] anybody about what you were doing up there?

“A. No, I don't recall. It was quite obvious what we were doing—camping.”

Was that question asked you, and did you give that answer?

A. Well, I guess—I gave the answer. I gave that answer, yes.

Q. All right. Now, is that still a true answer?

A. Answer?

Q. Your answer to that question.

A. Yes, I don't change it any.

Q. You won't.

“Q. Is it possible you told somebody you were just up there surveying?

(Testimony of Chet L. Parker.)

“A. No, it would not have been possible to tell someone I was surveying because I wasn’t surveying, in the sense of surveying lines.”

Did you give that answer to that question?

A. Yes.

Q. I wish before we go on there you would tell us just what the difference is between surveying and surveying in the sense of surveying lines?

A. Well, my English may not be the best in the world, but if I am going to survey a building or a peach orchard or—— [406]

Q. Mr. Parker, we would like to talk about real estate now, I mean ground.

A. Well, all right.

Q. Not a building.

The Court: I think he has answered this question. His “surveying” is used in the sense of estimating value.

Q. (By Mr. Krause): Is that correct, Mr. Parker?

A. Yes; if I surveyed this building, I would take its value and its construction.

Q. When you were surveying this property up there you were just looking at its value?

A. When are we supposed to be surveying, and how?

Q. On the 7th of September, 1951, when you were talking with this gentleman at Lost Lake.

A. Then if I used the word “surveying,” then I was looking at its value, yes.

(Testimony of Chet L. Parker.)

Q. The next question:

“Q. Possibly you could have told someone that you were going to buy some property up there and were just looking it over?

“A. Now, that could have been possible.

“Q. You just don’t recall speaking to anybody in particular up there and spending some time with them?

“A. Well, I definitely didn’t spend any time with [407] anybody.”

Is that the answer you gave to that question?

A. Yes.

Q. “Q. You are sure of that?

“A. Well, definitely and absolutely I didn’t spend any time.”

Was that your answer to that question?

A. Yes.

Q. The next question:

“Q. We will say a half-hour?

“A. No, I didn’t spend a total of a half-hour with anyone, any one person.”

Was that your answer? A. Yes.

Q. The next question:

“Q. I didn’t mean to quibble. A quarter of an hour. I mean you emphasized a half hour. Let us reduce it to fifteen minutes.

“Mr. Jaureguy: You were the one that talked about a half hour.

“Mr. Lindsay: I was just trying to give him an idea of how long a reasonable time was so that he

(Testimony of Chet L. Parker.)

might recall having talked to someone in [408] particular."

Now, your answer is: "Well, I talked to several people. There were many people there. I don't remember of talking to any specific person."

Now, that was the answer you gave at that time, was it not? A. Yes.

Q. But you do now remember talking to this specific person about the level of the lake?

A. Well, I don't know this—I remember talking to someone about the level of the lake. I talked to several people. I remember we were getting water, we were water out of a community faucet there, and we would go over there and naturally we would say, "Hello, good-bye, how is camping," and so on.

Q. The only thing I was inquiring about was that you had conversation relating to these matters that I read to you. Now, you do recall speaking to someone about the level of the lake?

A. I think I spoke to several about the level of the lake, not just this one gentleman.

Q. And that this man that you spoke to about the level of the lake told you that he had had something to do with the dam that had been constructed there?

A. I am not sure this is the same fellow that had construction on the dam, but someone I talked to that day indicated [409] to me that they cleaned out the waterway or something.

Mr. Krause: I think that is all.

(Testimony of Chet L. Parker.)

Examination

By the Court:

Q. For some years prior to August, 1951, had you purchased a number of tracts of timber?

A. Yes, yes.

Q. How did you buy them? Did you have cutting contracts on most of them, or did you buy the timber outright, or did you buy the land and the timber both?

A. Both ways.

Q. Sometimes you merely bought the timber, and other times you bought the land and the timber?

A. Yes.

Q. When you bought the real property, that is, the land and the timber, who prepared the deeds?

A. Well, the people I purchased it from, as I remember.

Q. You would always get deeds from the people from whom you purchased?

A. Yes, as I remember.

Q. What kind of deed would you ask for?

A. Well, I don't think I asked for any, but they always gave me warranty deeds, as I remember.

Q. Most of the time they gave you warranty deeds?

A. Well, I think—that is the only kind I ever got, as I [410] remember it, ever have got.

Q. A general warranty, or special warranty?

A. I don't know the difference.

Q. Did you know what a bargain-and-sale deed was?

A. No; no, I certainly do not.

(Testimony of Chet L. Parker.)

Q. How about a quitclaim deed; didn't you take any of those?

A. I don't remember ever taking a quitclaim. I have heard attorneys talk about it.

Q. You buy quite a bit of property in the State of Washington, don't you?

A. No, I have only bought, oh, probably four or five pieces.

Q. Are you not the Parker that advertises in the paper to buy timber in Vancouver?

A. No.

Q. Is there not a Mr. and Mrs. Parker who buy timber in Vancouver?

A. And advertises?

Q. Yes.

A. No, I never advertised to purchase anything, your Honor.

Q. This Marsh that you were talking about, is that John Marsh or Fred Marsh in The Dalles?

A. Well, he is from Portland, the man I am talking about, John Marsh here in Portland.

Q. Let me ask you one or two questions about reliance. Do I understand your testimony to be that the time you paid the [411] \$25,000 and the \$1,000 and the \$4,000 you relied on the statement of Mr. Winans that he had good title?

A. I was relying on that instrument that said he would give a good deed.

Q. You were relying not on any conversation with Mr. Winans but on the option agreement?

A. Yes, it said it would have a good deed on it.

(Testimony of Chet L. Parker.)

Q. At that time you had not been to the title company and found out that they had issued a \$8,000 policy at one time, had you?

A. I had on the 13th.

Q. On the 13th you had?

A. I think that that is the time that the lady showed me the file.

Q. And so, at the time you paid \$25,000 you had been to the title company? A. Yes.

Q. At the time you paid the \$95,000 did I understand you merely to say that you relied on the title company report and not on Mr. Winans, or did you rely on both of them at that time?

A. Well, I relied—I felt that that would furnish the title if I got a deed and I got a title insurance policy, that would be it, and I relied on the title company to take care of that part of it. [412]

Q. At the time you paid the \$95,000?

A. Yes, I was relying on the purchaser's policy.

Q. But that was not the case at the time you paid the \$25,000, the \$1,000, and the \$4,000; you were relying on the instrument which Mr. Winans had signed? A. Yes.

Q. I just wanted to get that clear.

The Court: We will recess until 9:15 tomorrow morning.

(Thereupon proceedings herein were adjourned until 9:15 o'clock a.m., January 22, 1953.) [413] -

* * *

(Testimony of Chet L. Parker.)

Cross-Examination

By Mr. Ryan:

Q. Mr. Parker, on this Murphy-Nelson tract you were familiar with the logging show on that tract at the time Mr. Stegmann was working on it?

A. Yes, I was fairly familiar with it.

Q. Do you recall a fire that occurred on that particular logging show in the fall of 1949?

A. Yes, that was a portion of a large fire.

Q. Was that prior to the taking of the mortgage on that tract by yourself for Mr. Stegmann, the timber rights on that tract?

A. I would not be able to answer that. I don't remember, we should possibly say.

Q. Could you tell us whether that fire affected the profit [414] of Mr. Stegmann on the tract?

A. Well, it would naturally, yes, considerably.

Q. Have you any knowledge of the extent of that fire?

A. Purely a guess. After all, I didn't get on it and cruise it, but I would say the fire would involve probably a million and a half, two million feet of timber. It is purely a guess, however, and that wood where it was at would be quite a large sum of money. I think some of it was felled and bucked, logged, and a bridge or two involved, as I remember, and some rigging and stumpage and so forth.

Q. The mortgage in December on the timber

(Testimony of Chet L. Parker.)

rights to the Murphy-Nelson tract that you described in your testimony, you say that was for an advance of \$6,000?

A. Yes, as I remember it, it was six thousand. It was for the—it principally had to do with falling and bucking the right-of-way that he had and rocking and filling the road on the right-of-way. The right-of-way he had was pertaining to the timber, and the right-of-way was his.

Q. Were you familiar with the winter of 1949 in the logging industry? Do you recall that?

A. Yes, very vividly, very vividly; yes.

Q. In what respect do you recall it?

A. Most of us all were broke in 1949.

Q. Most of you were all broke?

A. I say most of us were all broke up in [415] 1949.

Q. I am referring particularly to the fact that it was necessary to rock a road into the Murphy-Nelson tract. Would that normally have been necessary if it had not been for the severe weather?

A. Well, it was a bad winter. The reason I remember that, the Harold brothers tried to get a road opened up during the early part of the year. I also was interested in opening it up, and the judge and commissioners kept it closed a considerable time, and I remember it was a hard winter both physically and financially for loggers and lumbermen.

Q. You had been shown this statement of the

(Testimony of Chet L. Parker.)

amount due on your mortgage from Stegmann, Mr. Parker, yesterday. Do you recall that?

A. Yes, I recall that.

Q. It says here on the original mortgage \$2,962.62. Had Mr. Stegmann been paying you out on the original mortgage at that time?

A. Well, it is my wife's entries. He had been paying me, yes, paying me money.

Q. That would indicate that to you?

A. Yes; yes, he had been paying me.

Q. At the time of the assignment of his rights of the Murphy-Nelson tract to you in that contract between yourself and the Rutherford Logging Company and Mr. Stegmann, this summary of your indebtedness and also the current indebtedness [416] for Mr. Stegmann was made up, I assume, March 23, 1950?

A. Well, Mr. Torp made up that contract, as I remember. For some reason he explained the Collector or somebody else—I would have to sign that even though I didn't have anything to do with it. He explained it to me, that I owned—I had loaned money at interest in it or something, and I would have to sign with it or something. I don't understand at all what that was.

Q. Being a party to it.

Now, that agreement of March 23, 1950, when the Rutherfords began to log out the tract, was made primarily for the purpose of paying out the balance of your indebtedness, was it not?

A. Yes.

(Testimony of Chet L. Parker.)

Q. And as a result of that agreement and the logging that took place subsequent to it—I believe the contract had until November, 1950, to run—were you paid out on your indebtedness from Mr. Stegmann?

A. On that Murphy-Nelson piece?

Q. Yes.

A. Yes, Mr. Stegmann paid me in full.

Q. Did, in fact, Mr. Stegmann abandon all of his rights to that piece at that time?

A. That I don't remember.

Q. You don't remember? [417]

A. I just don't remember the details on it. I believe so, but I am not sure.

Q. Would there have been any additional profit-ing from that transaction other than the paying out of the indebtedness of Mr. Stegmann?

A. Well, yesterday I didn't—it seems like I was to get a dollar a thousand for part of my—for making the investment. I didn't see that in the contract yesterday, but it might not have been in this particular tract. Maybe it was with someone else. I quite frequently took a dollar a thousand for rock-ing roads in.

Q. But you are certain of this, that by virtue of this arrangement Mr. Stegmann was able to fully cancel his indebtedness to you?

A. Oh, yes, he didn't owe me any money on that contract.

Mr. Ryan: That is all the questions I have.

The Court: Mr. Strayer?

No. 14201

**United States
Court of Appeals
For the Ninth Circuit.**

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Appellants,

vs.

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AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

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Transcript of Record

In Five Volumes

**Volume II
(Pages 531 to 1022)**

**Appeals from the United States District Court for the
District of Oregon**

FILED

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**PAUL P. O'BRIEN
CLERK**



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(Testimony of Chet L. Parker.)

Redirect Examination

By Mr. Strayer:

Q. Do you recall, Mr. Parker, when you were paid out on the Murphy-Nelson tract when the final payment was made? A. I don't remember.

Q. Approximately?

A. I don't know it approximately even. [418]

Q. Well, were you paid out in 1950, or was it 1951?

A. Well, it was a month or two it carried either way. I don't know which time it was.

Q. At the time you were paid out had you entered into other financial transactions with Mr. Stegmann? A. It is possible.

Q. Mr. Parker, I asked you yesterday about that replevin suit. I now have a copy of the papers. Can we have this now marked as an exhibit to show it to Mr. Parker?

The Court: Had you marked that in the pre-trial order as an exhibit?

Mr. Buell: We had a partial copy of it marked as Exhibit 33.

(Discussion off the record.)

(Photostatic copy of Complaint No. 17031 was thereupon marked Plaintiff's Exhibit 76 for Identification.)

Q. (By Mr. Strayer): Will you examine Exhibit 76 for Identification, Mr. Parker, and let me

(Testimony of Chet L. Parker.)

ask you whether that refreshes your recollection regarding the replevin suit? I should say, I think I was in error in referring to Mr. Heider as your attorney. I think the Marsh brothers were your attorneys on that proceeding.

A. What it looks like, I don't know what it is, what you are supposed to know; but anyway it is whatever it is. [419]

Q. Does it come back to you now that you did bring such an action?

A. Well, it is not in my mind, but I don't know how I did, but I know I signed something here, and if that is an action, that is what I did.

Mr. Strayer: We will offer the exhibit in evidence, your Honor.

Mr. Lindsay: Could we take a look at it?

The Court: Show it to Mr. Lindsay.

Mr. Lindsay: We have no objection.

Mr. Jaureguy: I have no objection. I think I have never seen it or heard of it before. I would like to see it, of course.

Mr. Ryan: The same is true of ourselves, but I have no objection.

The Court: You have no objection?

Mr. Ryan: No, I have no objection.

The Court: It may be admitted then.

(Document previously marked Plaintiff's Exhibit 76 for Identification was thereupon received in evidence.)

Mr. Jaureguy: I don't know what it is for. I

(Testimony of Chet L. Parker.)

haven't the slightest idea what they brought it in for, but I do not object.

Mr. Strayer: Well, I thought that you might have objection [420] to stating the purpose. The purpose, of course, is to show the relationship between Mr. Stegmann and Mr. Parker, that he had a sufficient interest in the operation out there that he brought a replevin suit to replevin a truck that Mr. Stegmann was using in performing the Gopher Valley operation.

Mr. Jaureguy: That is not what I understood yesterday. I thought it was in the possession of a garage.

Mr. Strayer: When it was replevied from the garage.

The Court: Go ahead, Mr. Strayer.

Mr. Strayer: We have one more document, your Honor, which has no exhibit number assigned to it, one marked that has not been assigned an exhibit number. May this be marked Exhibit 77?

The Court: What is the nature of the exhibit?

Mr. Strayer: This is the file referring to that loss of the truck and tractor that went off the grade.

(File containing various letters marked Plaintiff's Exhibit 77 for Identification.)

Mr. Jaureguy: Your Honor, this is a big file. I would like to suggest that we do something so that all the attorneys do not have to read this now and do not hold things up.

Mr. Strayer: I have no objection to it.

(Testimony of Chet L. Parker.)

The Court: You go on to the next subject. After they [421] have had an opportunity of examining it, then you may put Mr. Parker on the stand again and ask him the questions.

Mr. Strayer: All right, your Honor.

Q. Do you have your diary before you, Mr. Parker? A. No, I do not.

Q. Exhibit 115. Will you refer to the entry on August 13th and tell me, if you can, when that entry was made with reference to the taking of the option?

A. I don't know when I made this entry.

Q. Will you read it and see if you can tell from the entry? A. Yes, I have read it.

Q. What I am interested in is the language under the heading of August 13th: "Am buying Stegmann's option tonight or tomorrow morning."

A. Are we reading from August 13th, 1951?

Q. Yes, on the second paragraph. "The timber is very good, indeed, so am buying Stegmann's option tonight or tomorrow."

A. Yes, I see it now.

Q. Does that not indicate that you made that entry before you went to The Dalles to take the assignment of the option?

A. Well, I don't know what time of the day I wrote it in. Any time I get a moment, why, I write in my diary.

Q. The last portion of that entry: "Stegmann has paid \$1,000 now and is to pay out of the money I pay him on \$4,000 on election to purchase," does

(Testimony of Chet L. Parker.)

that not indicate that you had [422] an agreement with Mr. Stegmann that he would pay the balance of the \$4,000; that he would stand that phase of it, and that you would pay him \$25,000 for his option?

A. It does not mention about \$25,000 other than \$25,000 for the option.

Q. All right. A. That he wants it, that is.

Q. The Court questioned you about your reliance in title matters. At the time that you took the assignment of option from Mr. Stegmann did you rely to any extent upon anything that Mr. Stegmann said regarding the title to the property?

A. No, I looked that option over very carefully, the thing that he had, as I remember.

Q. Did Mr. Stegmann say anything to you about the title to the property?

A. Well, he possibly did. I don't know that he did or not.

Q. With reference—you were questioned about these checks that were charged to Phillips Construction Company, and I think you said you did not know whether they were all charged to that account or not. It is a fact, is it not, that all of the checks on the Winans transaction, that is, the \$1,000 check and \$4,000 check and the \$95,000 payment, all came out of the Phillips Construction Company account?

A. As I remember of seeing it yesterday, it did. It would almost have to because we didn't have much money in the [423] other account. [424]

LOIS PARKER

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mrs. Parker, how long have you and Mr. Parker been married, approximately?

A. I think since 1936.

Q. During such period of that time as Mr. Parker has been in the timber business have you worked with him in connection with his timber and logging business? A. I helped him, yes.

Q. In connection with the Lost Lake property purchased from the Winans family, do you have any independent recollection of the various important dates involved, such as the date of the assignment of the option and the exercise of the option or signing of a Notice of Election to Purchase and delivery of the deed and payment of the final money?

A. Well, I didn't have anything to do with any of them except the assignment of option and the delivery of the deed.

Q. Well, my question was, do you have any independent recollection of those dates and events, or will it be necessary for you to refer to some memorandum in the course of——

A. I don't have any memorandum.

(Testimony of Lois Parker.)

The Court: You do not have any what? [425]

The Witness: Any memorandum.

The Court: I thought part of the entries of the diary were made by you.

The Witness: I think perhaps.

Mr. Jaureguy: That is correct, but I think on none of the dates except the date of delivery of the deed, I mean, that has been referred to. There are other entries there that have reference to other things. That is my recollection.

Mr. Buell: I will ask the Bailiff to hand to the witness Exhibit 74.

Mrs. Parker, that document, Exhibit 74, which was just handed to you, purports to be an assignment of property involved in this case to Chet Parker and signed by Walter Stegmann, and there it bears the date of August 13th. Can you identify that as to the—or have you ever seen that document before? A. Yes.

Q. Was that prepared on the date which is indicated at the top of it, August 13th?

A. I am sure it was.

Q. That was in The Dalles in Mr. Stegmann's apartment up there, is that correct?

A. I don't know if it was the home or apartment, but where he lived there, yes.

Q. Wherever Mr. Stegmann was staying, that is where it was [426] prepared? A. Yes.

Q. In connection with that assignment, there is recited in it the sum of \$25,000. There was some uncertainty yesterday as to when that \$25,000 by

(Testimony of Lois Parker.)

check was paid to Mr. Stegmann. Do you know anything about that? A. Yes.

Q. When was the check given to Mr. Stegmann?

A. I gave him the check the same evening that we made the option.

Q. The same evening?

A. Yes, this assignment.

Q. Referring to that \$25,000 check, which is Exhibit 40-A, are you familiar with the fact that on that \$25,000 check there appears to be a discrepancy in the date, and that the date appears to be August 14th?

A. No, I don't know anything about that.

Mr. Buell: Could the original check be handed to the witness, please? While the Clerk is looking for that I will pass it and come back to it.

(Discussion off the record.)

Q. (By Mr. Buell): Mrs. Parker, referring still to the evening of August 13th, at the time that you prepared this assignment you say you executed the check to Mr. Stegmann, is that correct?

A. I am quite sure I did.

Q. It was delivered to him there at the same time that the [427] assignment was signed?

A. The same evening, yes.

Q. The same evening. Then that evening do you recall leaving Mr. Stegmann's and then returning to his—where he was, leaving later in the evening, or can you tell us one way or the other about that?

A. It seems to me we may have gone back that

(Testimony of Lois Parker.)

evening to tell him something, but I am not positive.

Q. That would be in connection with the arrangements for Mr. Stegmann to accompany Mr. Kenny to show him the quarter corner, is that correct? A. Oh, maybe that is the reason.

Q. Did you stay at The Dalles that evening?

A. I am not sure when really we stayed.

Q. During the occasions during this transaction when you stayed at The Dalles did you generally stay at the Oregon Motor Motel up there?

A. We preferred that if they had a vacancy, yes.

Q. When did the fact that Mr. Stegmann had this interest or option on the Winans' property or any property in the Lost Lake area first come to your attention, or do you remember?

A. No, I don't know when I learned it.

Q. Did you see or talk with Mr. Stegmann at any time on August 12th?

A. I don't recall doing so. [428]

Q. Do you recall what time—do you recall going to Hood River on the morning of August 13th?

A. Yes.

Q. Do you recall transacting any business or transacting any business with your husband in Hood River that morning of the 18th?

The Court: Morning of the 13th or the 18th?

Mr. Buell: 13th; I am sorry, your Honor.

The Witness: Well, no, I don't remember.

(Testimony of Lois Parker.)

Q. (By Mr. Buell): Did you go to the title company with Mr. Parker?

A. I can't remember whether I did or not.

Q. In other words, you couldn't say whether he went to the title company in the morning or whether he didn't; is that correct?

A. I couldn't say when he went.

Q. Did you stay in Hood River all the day, the 13th? A. Yes.

Q. What time in the evening did you meet Mr. Parker?

A. Well, I couldn't say positively. We ate dinner, I think, in Hood River.

Q. Did you meet him before or after 5:00 o'clock in the evening? Could you say that?

A. Well, I think it was—I think it was before the stores closed because I wanted him to look at a dress that I liked. [429]

Q. Following your having dinner with Mr. Parker—well, make it following the last time you saw Mr. Stegmann on the evening of August 13th—did you yourself have any telephone conversations or see Mr. Stegmann in person and discuss the Winans' property with him at any time between the 13th and August 18th?

A. Well, I don't know, Mr. Buell.

Q. You don't know whether you did or didn't?

A. No, I don't remember.

Q. Were you present at any time on August 17th when any discussion or arrangements were made between Mr. Parker and Mr. Stegmann rela-

(Testimony of Lois Parker.)

tive to Mr. Parker going to Lost Lake on the 18th?

A. I am not positive about that.

Q. You mean you could have been or you might not, is that correct?

A. Yes.

Q. Did you yourself see or talk with Mr. Stegmann on August 18th?

A. I don't remember doing so.

Q. I beg your pardon?

A. I don't remember doing so, but I might have.

Q. Did you see Mr. Stegmann in person at any time between August 18th and August 30th?

A. August 18th and August 30th? [430]

Q. To refresh your memory, August 30th is the date that the policy of purchaser's title insurance was stopped for and paid for in Hood River.

A. Well, I very well might have, but I don't recall any specific incident, I don't think.

Q. That is, you cannot recall seeing him on any specific occasion between those dates, August 13th and August 30th?

A. Well, I can't say that I remember I did, no. I don't believe so.

Q. In other words, you don't recall any specific time of seeing him between those dates?

A. Well, between the 18th and the 30th? I don't even remember if that was the time he was up there surveying or not, but I could very well have seen him during that time.

Q. Can you recall any telephone conversations between yourself and Mr. Stegmann at any time between August 18th and August 30th?

(Testimony of Lois Parker.)

A. Well, just to say that I remember he called me on the 19th or 20th or some day, I do not recall.

Q. I am not trying to get you to confine yourself to a definite date. I am asking you if you can recall any specific telephone conversation with Mr. Stegmann occurring at any time between those dates?

A. Well, I can't recall.

Q. In other words, if you can identify a conversation by that [431] subject matter or what was discussed; that is all we wanted, not necessarily the exact day or time that it occurred.

A. Well, there could have been, but I don't recall any right now.

Q. In other words, you don't recall of any discussion between you and Mr. Stegmann on the telephone concerning this Lost Lake property or the surveying of the reserved area, between August 18th and August 30th?

A. Well, I don't recall any right now, no.

The Court: Are you talking about a conversation with Mrs. Parker personally, or was she present at the time it was taking place?

Mr. Buell: No, I was referring to telephone conversations, your Honor, between the 18th and 30th with Mr. Stegmann.

The Court: Between whom?

Mr. Buell: Between Mrs. Parker and Mr. Stegmann.

The Court: You are not asking whether or not she was present at the time Mr. Stegmann was talking to Mr. Parker over the phone, are you?

(Testimony of Lois Parker.)

Mr. Buell: No.

The Court: All right.

Q. (By Mr. Buell): Mrs. Parker, can you recall being present at any time between August 18th and August 30th when your husband, Mr. Parker, was having a telephone conversation with a person whom he identified to you as Walter Stegmann? Do [432] you understand what I mean?

A. You mean he was having a conversation, and he said, "This is Walter Stegmann calling me," or some such thing?

Q. Either after the call was finished or during the time the telephone call was going on.

A. No, I am afraid I don't remember, Mr. Buell.

Q. Do you recall Mr. Parker and your son, Myron, going up on a survey trip on or about Saturday or Friday, August 31st?

A. I don't recall when they went, but I do know they went because my son came back all wet. He said he had been in the lake.

Q. Did you accompany them to Hood River that day?

A. I don't believe that I did, but I don't remember of it.

Q. Mrs. Parker, from August 31st to September 7th can you recall seeing, yourself, seeing Mr. Stegmann on any particular occasion?

A. I don't know when it was, but my husband had one conversation with him, I think.

Q. Were you present at that conversation?

(Testimony of Lois Parker.)

A. Yes.

Q. What was that conversation about, or do you know?

A. It was about the difficulty, I think, of setting out the reserved area.

Q. Was the conversation that you had in mind, did that occur just shortly before, one or two or three days before [433] the final closing, or was it——

A. I don't remember when it was.

Q. Do you recall whether or not it had anything to do with fixing the time for the final closing of the sale?

A. Well, I don't know whether Mr. Stegmann knew that or not, but my husband and I had considerable discussion about the 10th being the time that we had set for Mr. Winans to finish.

Q. But you cannot recall that that was discussed with Mr. Stegmann on the occasion you have in mind?

A. Well, it very well could have been. My husband might have said, "Hurry up and do this."

Q. But you yourself do not have any recollection of it being discussed, is that correct?

A. You mean having discussed the time of it?

Q. The time.

A. Well, now, I couldn't tell you, but I remember my husband saying to Mr. Stegmann, "Now, be sure that is done on the 10th."

Q. Is this discussion that you have in mind, did that occur on either the day that you came down

(Testimony of Lois Parker.)

from your camping trip at Lost Lake or the day before you went up there?

A. I don't remember, Mr. Buell.

Q. The night that you spent at Lost Lake on the camping trip was a Friday night, was it not?

A. I don't remember that. My husband's diary, I think, should tell you. [434]

Q. What is the first event that you recall yourself of your having anything to do with the closing of this transaction or getting ready to close the sale?

A. Well, the first thing I remember is that my husband was supposed to go do it, and then he made this appointment and I had to go.

Q. When did that occur?

A. Well, since I went two days, it must have been the day before I got the deed because I wasn't ready, and I didn't want to go.

Q. Do you recall making the arrangements to get the \$95,000 cashier's check?

A. Well, I am not just positive about that, but I had to go do it, yes.

Q. Do you recall that was a Sunday?

A. Yes.

Q. Did you know on that Sunday that you were going to close the sale?

A. I don't believe that I knew on Sunday that I had to go do it, no.

Q. Then you went to Hood River on Monday, September 10th, didn't you?

A. I believe that was the day.

(Testimony of Lois Parker.)

Q. Are the events that occurred on that Monday clear in your mind? [435]

A. I think fairly so.

Q. It was the day before that you had gotten the cashier's check, is that not correct?

A. I believe so.

Q. Which would be the 9th. Now, referring specifically to Saturday, September 8th, do you recall seeing Mr. Stegmann on that day?

A. No, I don't recall, I don't think.

Q. Did you yourself talk with him on the telephone that day?

A. Well, I can't say that I didn't, but I don't remember doing so.

Q. You don't remember talking with him that day?

A. No, I don't remember doing so.

Q. Were you present at any telephone conversations between Mr. Parker and Mr. Stegmann on that day?

A. Well, it is possible, but I don't remember.

Q. You don't recall. Did you receive from, or can you recall at all receiving from Mr. Stegmann late in the afternoon of Saturday, September 8th, a rough draft copy of the proposed form of deed?

A. On Saturday?

Q. Yes.

A. I believe I got the deed on Monday.

Q. Well, I am referring to Saturday now.

(Testimony of Lois Parker.)

A. Well, that would be too—no, I don't believe I got the [436] deed on Saturday.

Q. Can you state definitely that Mr. Stegmann did not give you a rough draft copy of the deed on Saturday, September 8th?

A. Well, I believe I could state positively I only had one draft.

Q. All right. Now, approximately what time did you get to Hood River on Monday, September 10th?

A. I don't remember that.

The Court: We had better stop right now.

(Recess taken.)

Q. (By Mr. Buell): Now, we were just getting into what occurred on Monday, September 10th, Mrs. Parker, and I believe you testified that you were not quite sure but you thought that it was either Monday, not earlier than Sunday, that you had learned that you were going up to handle the closing transaction, is that correct?

A. Well, as near as I remember, I think so.

Q. Do you recall whether you had spent Sunday night at Hood River or McMinnville?

A. Well, we could have spent it in Vanucouver, but I don't remember.

Q. No, I didn't mean Hood River; I meant Vancouver or McMinnville. I am sorry. [437]

A. No, I don't remember.

Q. About what time of the day did you arrive in Hood River? A. When, Mr. Buell?

Q. On Monday, September 10th.

(Testimony of Lois Parker.)

A. I don't remember about that.

Q. Was it in the morning?

A. I don't know. I went in to Mr. Abraham's office, I remember, first to see if he would be in later in the day.

Q. But you could not state as to whether you got there in the morning or sometime in the afternoon?

A. Well, I don't believe I could state positively, but I remember I went in there earlier in the afternoon when I went back.

Q. Well, would your best recollection be, then, that you arrived there sometime in the morning possibly shortly before noon?

A. I just don't know, Mr. Buell.

Q. Had Mr. Parker told you what his plans for the day were?

A. Well, as I recall, he was looking at some timber.

Q. Where?

A. Well, I don't know what makes me think Dufur, but I think some up in that direction.

Q. I take it you both went to Hood River in the same car, is that correct?

A. No, I can't remember that we did. [438]

Q. You don't recall, then, whether you last saw your husband at either McMinnville or Vancouver, wherever it was that you stayed, or whether you last saw him in Hood River on September 10th before the closing?

(Testimony of Lois Parker.)

A. No, I don't remember where I saw him last.

Q. Wherever it was that you saw him last, before starting up and handling the closing transaction, had you made any arrangements as to where you would see him next?

A. Well, we surely did. I mean, he never goes away from home and doesn't say he will be back——

Q. What arrangements did you have as to where or when you would meet Mr. Parker following your taking care of the business you were going to handle on Monday?

A. I really think we may have stayed up there somewhere, but I don't know.

Mr. Buell: Mr. Reporter, would you read that answer back?

(Last answer read.)

Q. (By Mr. Buell): Stayed up where?

A. I meant in the Hood River-The Dalles vicinity. We may have stayed there, but I am not positive about that.

Q. That was not my question. My question was: What were the arrangements that you had made with Mr. Parker to meet him in the afternoon or evening of September 10th?

A. Well, I just don't know, Mr. Buell.

Q. Can I take it then from your answer that you started up to Hood River to handle this closing transaction and that you [439] did not know when or where or how you were going to next get in touch with Mr. Parker?

(Testimony of Lois Parker.)

Mr. Jaureguy: I object to that.

The Witness: Why, of course not. He never goes away and does not tell me where he is going to be.

Q. (By Mr. Buell): Where did he tell you he was going to be?

A. I don't remember where he told me. He just simply does not go away from home and not tell me where I will see him another time.

Q. What was the first thing that you did after arriving at Hood River on Monday, the 10th?

A. I couldn't say the first thing I did. I don't remember.

Q. What is the first thing, then, that you did with reference to the Lost Lake timber purchase?

A. Well, I believe the first thing I did was to go into Mr. Abrahams' to see if I could count on him sometime that day.

Q. Did you see Mr. Abrahams when you first went into his office that day?

A. I believe I talked to his office girl.

The Court: Are you talking about Abrahams? I do not think there is a lawyer by that name there. Are you not talking about Kenneth Abraham?

The Witness: That is the name.

Mr. Buell: I probably have fallen into calling him what [440] we used to call him when we went to school, your Honor. I am referring to Kenneth Abraham.

The Witness: Yes.

Q. (By Mr. Buell): Did you find out whether

(Testimony of Lois Parker.)

—or did you make an actual appointment to see Mr. Abraham later in the afternoon?

A. I believe she told me that she was quite sure he would be in.

Q. At any particular time?

A. Well, I don't remember that I set a time. I don't suppose I knew, but it seems like it was later.

Q. Did you give your name to the office girl?

A. Yes, and I told her that my husband had been in before when he bought that log dump site.

Q. Did you tell her what you wanted to see Mr. Abraham about?

A. Well, I may have mentioned it. I am not sure that I did.

Q. Had you either seen or talked with Mr. Stegmann either in person or over the telephone on September 10th before you went into Mr. Abraham's office as you just described?

A. I don't remember, Mr. Buell.

Q. Can you take a minute? What did Mr. Parker tell you that you would have to do in connection with the closing transaction before you left him on the 10th?

A. Well, I don't know whether he mentioned the specific things I was supposed to do or not. [441]

Q. How did you know what you were supposed to do, then?

A. Well, he had the title report, and I had to be sure that Mr. Abraham saw that those were taken off the bargain and sale deed, wanted him to look

(Testimony of Lois Parker.)

at that, and the money had to be paid, and that is all I recall.

Q. Did Mr. Parker give you a title report and tell you to have Mr. Abraham check to see that the exceptions were taken off?

A. No, I think I probably kept the title report.

Q. You had previously gotten the check the day before? A. On Sunday, yes.

Q. But did you have a copy of the deed when you went to Hood River in the morning?

A. On the 10th?

Q. Yes.

A. I don't think I got the deed until the evening of the 10th.

Q. You do not think that you had one, then?

A. Well, I am quite sure I didn't have one.

The Court: How did you know it was a bargain and sale deed when you went in to see Mr. Abraham unless you got a deed prior to the time you went in to see him?

A. Because Mr. Winans had told my husband he was going have a bargain and sale deed.

Q. Mr. Parker had told you that, had he?

A. Yes, I knew that we were to take a bargain and sale deed. [442]

Mr. Jaureguy: That is right in the option itself.

Mr. Lindsay: I beg your pardon. Where is that in the option?

Mr. Jaureguy: Do you want me to read it now or can I show it to you?

Mr. Strayer: It speaks for itself, at any rate.

(Testimony of Lois Parker.)

Mr. Jaureguy: They do not use the expression, "bargain and sale deed." My mistake; that is my mistake.

The Court: Does it say that?

Mr. Jaureguy: No, it does not use the expression, "bargain and sale deed."

The Court: I did not think it did.

Mr. Jaureguy: No, that is my mistake.

Q. (By Mr. Buell): Now, Mrs. Parker, you say you don't believe that you had a copy of the proposed deed or any proposed deed to this property when you went up there, and yet you knew that you were going to have to have the proposed form of deed checked by Mr. Abraham. Where did you think that you were going to get the deed?

A. Well, I had some arrangements with Mr. Stegmann to bring the deed to Mr. Abraham's office.

Q. Did you make that arrangement yourself?

A. I don't remember.

Q. By this time in the transaction—I am referring to the time when you went to Mr. Abraham's office to see if he would [443] be available in the afternoon—had you yourself talked with any member of the Winans family either in person or over the telephone, to your knowledge?

A. One time Mr. Winans was calling, that is, he said it was, and he wanted to speak to my husband, but he didn't speak to me, but I have never met any of the Winans family.

Q. Just that one telephone by a person who iden-

(Testimony of Lois Parker.)

tified himself as Mr. Winans is the only possible telephone call that you know of where you might have been talking to one of them, is that correct?

A. He didn't actually talk to me. I asked the operator who was calling, and I heard him tell her.

Q. Well, then, did you have any idea or arrangement as to when a deed was going to be ready on Monday, the 10th?

A. I don't remember.

Q. Did you see Mr. Stegmann at any time on Monday, September 10th?

A. Well, I very well may have, but I don't remember it.

Q. You cannot recall specifically seeing Mr. Stegmann at any time on that day?

A. Well, I saw him when he brought the deed to Mr. Abraham's office.

Q. That was seeing him, was it not?

A. Yes.

Q. Was that the first time that you saw him that day? [444]

A. Well, that is what I don't remember.

Q. Did you talk with him at any time on September 10th before the time that he brought the deed to Mr. Abraham's office?

A. I might have seen him.

Q. I didn't ask you that. I asked you if you talked with him at any time, either in person or by telephone?

A. Well, I would not have talked to him by telephone because I was just around town. I am

(Testimony of Lois Parker.)

sure I didn't talk to him by telephone, but I may have seen him.

Q. When you went up to Hood River on the 10th, did you know where you could reach Mr. Stegmann on that day if you wanted to?

A. Well, on the 10th?

Q. Yes.

A. Well, I understood, I think, that he was to be working on a deed, I don't know, or I may have called the office and asked.

Q. Did you know or have you any idea as to where he was going to be working on the deed?

A. Oh, I don't know as anyone told me, but Mr. Vawter Parker was making the deed for Mr. Winans. They had set the reserved area out of it.

Q. Then when you went up there you did not know, did you, that Mr. Vawter Parker was the attorney in Hood River who was [445] handling the transaction for the Winans?

A. Why, I am quite sure I knew that. Why, I had to know that, yes.

Q. Did you call at Parker's office at any time on Monday, the 10th, you yourself?

A. I can't remember doing it, Mr. Buell.

Q. Did you go to his office at any time——

A. On the 10th?

Q. Yes.

A. No, the first time I was there was the next day.

Q. What did you do between the time that you

(Testimony of Lois Parker.)

went in to check to see if Mr. Abraham would be available in the day and the time that you went back to see Mr. Abraham?

A. Well, I did shopping, and I had taken a book along to read, I believe. I just waited around.

Q. Was it your plan when you went up there that morning to complete the sale that day, if possible?

A. Oh, I had understood it was to be, yes.

Q. Then about what time was it that you went back to Mr. Abraham's office?

A. Well, I don't remember, but I waited there quite some time.

Q. Can you give any estimate as to the approximate time of the day that you went back to his office?

A. Yes, it was getting late in the evening.

Q. Would you say that it was about 4:00 o'clock or between [446] 4:00 and 5:00?

A. Well, it was getting late because I was worried about him going home and we would not get through.

Q. Would you say it was between 4:00 and 5:00?

A. Well, I think it was.

Q. You had not made any inquiry that you can recall as to the status of this transaction before the time that you went back to see Mr. Abraham sometime between 4:00 and 5:00 o'clock?

A. Well, I couldn't say that I did, but I can't remember doing it. Somehow I knew that it was to be done.

(Testimony of Lois Parker.)

Q. Then when you went back to see Mr. Abraham, what did you do?

A. I believe that he came out and spoke to me, and I said I didn't have the deed and we would have to wait.

Q. Did you tell him anything about the transaction that you wanted to have legal advice on?

A. Well, I believe I must have told him then that we wanted him to look at the deed.

Q. Did you go into his office to discuss it with him, or did you remain out in the outer office?

A. There wasn't anyone in the outer office, and I think I was sitting there by the door when I talked to him, and I didn't go in until I got the deed.

Q. Did you have to wait for some period of time before you finally got the deed?

A. Yes, I think it was a half hour or so. It was late. [447]

Q. Mr. Stegmann brought the deed in in person?

A. Yes, he did; yes.

Q. Then did he stay there with you, or did he leave?

A. Well, I believe he left, but I am just not positive.

Q. What did he tell you when he gave you the deed?

A. Well, he said they finally got through.

Q. And that the description on the copy of the deed that he gave you was satisfactory?

(Testimony of Lois Parker.)

A. Well, I don't know whether he told me that or not.

Q. Satisfactory to Mr. Stegmann?

A. Well, I presumed that is what you meant. I don't know whether to assume or not, but I suppose it was, or he would not have brought it.

Q. Was there anything said between you and Mr. Stegmann as to where you would see him next?

A. I don't recall.

Q. Did he ask you as to where he could find Mr. Parker? A. Well, I don't know.

Q. Then after you got the copy of the deed, what did you do?

A. Mr. Abraham went into his office. I did anyway, and he was sitting there in his chair. He leaned back. I handed him the deed. He was looking at it, and it seemed that it was very late, and he reached over and called Mr. Parker, and he wanted to ask him if it could——

Q. You are referring to Attorney Parker? [448]

A. Yes.

Q. What did he ask Attorney Parker?

A. He said it was so late that evening that would it be all right to close the deal the next morning.

Q. Then did he advise you that it was agreeable with Attorney Parker to close the deal the next morning? A. Well, yes, he told me that.

Q. What did you tell Mr. Abraham you wanted him to do in connection with completing the sale?

A. I just told him I wanted him to complete the sale.

(Testimony of Lois Parker.)

Q. Did you show him the title insurance report that you said you had with you?

A. I don't remember if I showed him that night or not.

Q. Did you tell him who was going to—or, who was going to receive the title to the property, in other words, in whose name the deed was to be made out, on the evening of the 10th?

A. I don't recall that I did.

Q. Did you tell him on the evening of the 10th how much money you were going to pay for the property?

A. I don't remember. I didn't leave the check with him.

Q. Did you advise him on the evening of September 10th as to whether or not you wanted him to make any check at the courthouse with reference to the title?

A. Oh, I believe so, because we arranged to meet earlier than his appointment with Mr. Parker. [449]

Q. What time was the appointment with Mr. Parker and Attorney Parker, do you recall?

A. I think it was 9:30, but I am not positive, or it might have been 9:15.

Q. Had you identified yourself by name to Mr. Abraham, as to your name, I mean?

A. Well, I don't know whether I—I presume the girl told him or else I did the girl. I remember he called me by name the next morning, I remember.

Q. He did call you by name the next morning?

(Testimony of Lois Parker.)

A. Yes, we both said good morning to each other when I arrived.

Q. Did you introduce Mr. Stegmann to Mr. Abraham?

A. Well, I presume I did. I don't remember.

Q. About what time did you leave Mr. Abraham's office on the evening of the 10th?

A. Well, I don't know what time they closed, but it was very near the time and maybe a little past their ordinary closing time.

Q. Then where did you go after you left Mr. Abraham's office?

A. I don't remember, went home wherever we were staying.

Q. Was Mr. Parker there when you got there, wherever it was? A. I don't remember.

Q. You don't remember? A. No. [450]

Q. But you did see Mr. Parker that night, did you? A. Oh, yes; I am sure I did.

(Discussion off the record.)

Mr. Jaureguy: They are looking for a carbon copy of the original deed. I have the original right here.

The Court: Give him the original.

Mr. Jaureguy: He has not asked for it, or I would.

Mr. Buell: I found the exhibit we wanted.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 27.

Mr. Jaureguy: I think I would like the record

(Testimony of Lois Parker.)

to show if it is a fact that that is the same document that I gave you the day before yesterday?

Mr. Buell: That is correct.

Q. Mrs. Parker, can you identify that document as to what it is or whether you have seen it before?

A. Well, I know positively I have seen it before, because I gave it to Mr. Jaureguy not long ago.

Q. Is that a copy of the proposed deed that Mr. Stegmann brought to Mr. Abraham's office on the late afternoon of September 10th?

A. Well, I believe it is, yes. This might be the very copy he brought.

Q. Well, that is what I mean.

A. I mean this carbon one right here might be the one he [451] brought. I don't mean some other copy.

Q. Is that the exact one that Mr. Stegmann brought to Mr. Abraham's office?

A. Well, I think it is because I have had it all the time.

Q. Did you take that and show it to Mr. Parker that night?

A. Well, I think that Mr. Abraham kept it that night.

The Court: I did not hear that.

The Witness: I think Mr. Abraham kept it that night, but I am not positive.

Q. (By Mr. Buell): Did Mr. Stegmann bring more than one copy or just the one?

A. Well, I don't recall more than one, but he could have maybe.

(Testimony of Lois Parker.)

Q. Did you make a copy of the description of the property as it appears on that deed?

A. Oh, gracious, I have never typed this description. This is a long description.

Q. Well, then, when you went back to see Mr. Parker the evening of the 10th you did not have a copy of the description that had been worked out for the reserved area?

A. It seems to me that I had some notes or something on it may be lacking—I just don't know whether it was the whole description, but I had something else. I don't know what it was.

Q. I believe you said that you do not recall where you stayed [452] that night. When did you meet Mr. Abraham the following morning, the 11th?

A. I believe in his office at 9:00 o'clock.

Q. Had you talked with Mr. Stegmann concerning the transaction at all Tuesday, September 11th, before going to see Mr. Abraham?

A. Tuesday, September 11th, no, I don't think so.

Q. When you saw Mr. Abraham in his office, what did you ask him to do then in connection with the sale?

A. Well, we went first to the courthouse where he checked the—I think there were three reservations on the title report, and I think he took those in and checked with a man there to see about that, and the man told him that they were not, not recorded yet, but that they had been released.

Q. You had by that time, then—had you defi-

(Testimony of Lois Parker.)

nitely advised Mr. Abraham that you had a title insurance report on the property?

A. I don't know that I advised him. I may just have given it to him.

Q. Do you remember whether or not you told him that you had a purchaser's policy of title insurance on the property?

A. Well, I don't recall, but I may have, but it wouldn't have had anything to do with those three reservations, I don't think.

Q. Did you ask Mr. Abraham to do any checking other than to [453] see if the three reservations on the title insurance report had been taken care of or——

A. Well, I can't remember. He did whatever was necessary to do, I am sure.

Q. Was there anything else that you were concerned about other than the reservations on the title insurance report?

A. Well, I was concerned about the whole thing. I didn't know how to do it, in the first place; I don't know, I was concerned about it.

Q. Did Mr. Abraham advise you that the reservations that he had checked on had been taken care of or eliminated? A. Yes, I believe he did.

Q. Then what did you do or ask him to do?

A. Well, I didn't ask him to do anything, but he said—I knew that he had to go to Mr. Parker's office, and I waited for him.

Q. Didn't you give him the check?

A. Oh, certainly.

(Testimony of Lois Parker.)

Q. And he had a copy of the deed at that time, didn't he?

A. Well, I can't remember if he had it in his hands, but he probably did.

Q. Didn't you tell him to go over and pay that money and get the deed?

A. Well, no, I didn't tell him. I supposed he knew he had to do that. He talked with Mr. Parker. He knew about it. [454]

Q. Did you tell him whose name to have filled in as the grantee of the deed?

A. Yes, I told him that.

Q. Before he went over?

A. No, I don't know that I told him before he went over. I don't know just when I told him.

Q. Are you unable to testify positively as to whether or not you told Mr. Abraham to fill in Chet L. Parker's name as the grantee before he went to Attorney Parker's office?

A. I don't know if I told him about it before, but I remember when he did put it in, and that was when he returned.

Q. Wasn't there some question about how much of a refund check he should receive?

A. Well, it had to do with so much an acre, but I don't know. I think that the amount must have been decided. I just don't know about that.

Q. In other words, you did not know what amount of check in refund Mr. Abraham was to receive?

A. I don't know, Mr. Buell.

(Testimony of Lois Parker.)

Q. You mean you don't know whether you did or not?

A. I just don't know whether I did or not.

Q. But you did make some mention to Mr. Abraham, didn't you, that there would be some amount of refund that he would return with, together with a deed, didn't you?

A. Well, I surely told him that. I knew it. [455]

Q. Was there any other kind of refund or return check that he was to get in addition to the deed?

A. Well, they had not paid for the revenue stamps.

Q. Who furnished the revenue stamps?

A. We did.

Q. You did? A. Yes.

Q. You had them with you when you came up from Vancouver? A. Yes, I did.

Q. Or wherever you came from?

A. Wherever I came from, yes. I had the revenue stamps, which I gave Mr. Abraham.

Q. Then did you ever have any understanding as to where you would be when he got through with the transaction?

A. Yes, I told him I would wait at the courthouse.

Q. Did you have any particular reason for not accompanying him, though, to Attorney Parker's office?

A. Well, I don't know that I had any particular reason for doing it or not doing it.

(Testimony of Lois Parker.)

Q. How long was Mr. Abraham over there?

A. Well, he was gone a long while.

Q. Did you eventually go over to Attorney Parker's office? A. Yes, I did.

Q. Did you go into his office?

A. Yes, I was in his outer office and his private office. [456]

Q. Were Mr. Abraham and Attorney Parker there?

A. I believe his office girl was in the outer office. She announced me.

Q. But in the inner office there just was Attorney Parker and Mr. Abraham?

A. That's right, Mr. Winans had not arrived.

Q. Were you introduced to Attorney Parker?

A. Yes.

Q. By name?

A. Certainly; Mrs. Chet Parker, not my own name.

Q. Was anything said while you were there in Attorney Parker's office with Mr. Abraham about your being the wife of the man who was purchasing the property from the Winans?

A. Well, I don't know whether it was or not. I think Mr. Parker knew I was concerned about my \$95,000 check.

Q. That was the first occasion that you had ever had to either see or talk with Attorney Parker, isn't that right?

A. Yes, that is the only time I ever saw him.

Q. You said Attorney Parker could see that you

(Testimony of Lois Parker.)

were concerned about your \$95,000 check. Who said that it was your check, or was that said in the course of your discussion with the two attorneys?

A. I think I may have said that they were not very anxious to get my money; that they didn't come on time.

Q. Did either Attorney Abraham or Parker say anything in [457] reply to that?

A. I think Mr. Parker said it was quite usual for people to be late.

Q. Did you see the deed; that is, the actual executed deed, while you were there in Attorney Parker's office?

A. Well, it may have been on his desk, but no one showed it to me.

Q. Did you know whether or not the deed had been signed by that time?

A. I thought it had not been, but I don't know where I got that idea.

Q. You say you thought it had not been?

A. It seems to me on the evening that maybe Mr. Abraham told me that Miss Winans had not signed the deed, but I am not sure. Somehow it seemed like it was not signed.

Q. Was Mr. Stegmann's name mentioned while you were there in Attorney Parker's office?

A. Yes, I think it was.

Q. Who mentioned it?

A. I think Mr. Parker said that Mr. Stegmann had a terrible time with the reserved area description.

(Testimony of Lois Parker.)

Mr. Lindsay: What was that answer?

(Answer read.)

Q. (By Mr. Buell): Did Attorney Parker say anything else with reference to Mr. Stegmann?

A. Well, he may have. I don't just recall. [458]

Q. Did you make any—or say anything about Mr. Stegmann?

A. Why, I very well might have. I don't know, Mr. Buell. Do you mean about anything?

Q. Yes.

A. Well, I don't recall what I said, if anything. I was very annoyed that I had to wait all that time.

The Court: What time was this?

The Witness: This was after 10:00 o'clock, your Honor.

The Court: After 10:00?

The Witness: Well, I think it was, because I waited quite a long time.

Q. (By Mr. Buell): Did you make any reference to Mr. Stegmann as being the prospective purchaser of the Winans' property?

A. Well, I can't recall ever making a statement like that.

Q. Well, I would think that you would be able to either recall it or be able to state that you did not make any such statement; can you?

A. Well, he was not a prospective purchaser so I am quite positive that I did not say that he was because I don't tell people things like that.

(Testimony of Lois Parker.)

Q. Did anybody else come into the inner office, as you referred to it, while you were still there with Attorney Abraham and Attorney Parker?

A. Well, I believe the door was closed, but I am not positive, and I couldn't say whether they did or not. [459]

Q. Did anybody come into the office in which you were sitting with Attorneys Abraham and Parker?

A. No, I am sure there was no one there but Mr. Parker and Mr. Abraham and myself.

Q. Then did you leave before the deal was finally completed?

A. Yes, I left. I think Mr. Winans had phoned. Perhaps Mr. Parker had told him, and he said that he would be along, and so I left then.

Q. Did you have any particular reason for leaving?

A. Well, I can't recall whether I did or not.

Q. Nobody suggested that you leave, did they?

A. Well, I don't think Mr. Parker asked me to leave. He surely didn't.

Q. Then after you left did you ever return to Attorney Parker's office?

A. I don't believe I have ever been back there.

Q. Never talked to Attorney Parker?

A. I have never spoken to him since.

Q. How long was it after you left before you next saw Mr. Abraham?

A. Well, he came before very long, it seems to me.

(Testimony of Lois Parker.)

Q. What did he have with him?

A. He had the deed with him.

Q. Was the grantee's name filled in as yet?

A. No, because he did that when he came back to the courthouse. [460]

Q. Did he have the two checks with him, or was it one check?

A. No, I think it was two checks.

Q. In what amounts, do you remember?

A. Yes, I remember one of them, and I—one was \$4,750.

Q. And the other one was a smaller amount for the revenue stamps?

A. Yes, it was a small amount.

Q. Was there any discussion while you were there in Attorney Parker's office as to how much the refund check for the two or three additional acres was going to be?

A. Well, I don't know whether it was mentioned or not.

Q. Was there any discussion as to whose check it was going to be?

A. As to whose check it was—I just don't understand your question.

Q. Well, I am sorry. That is probably confusing. Was there any discussion as to whose bank account the check for the reserved area was going to be drawn on?

A. I don't believe I knew anything about that.

Q. When you left Attorney Parker's office, did you know that the refund check was going to be

(Testimony of Lois Parker.)

on Attorney Parker's bank account, one of his checks?

A. The only thing I remember about the check that I thought was odd, or checks, was when I finally saw that they were [461] going to Mr. Abraham instead of to my husband, and I thought that was an odd thing.

Q. How would Attorney Parker know to have them made out to your husband?

A. Well, I don't know. Couldn't Mr. Winans tell him or someone tell him, Mr. Abraham? I just don't know how he would know.

Q. Now then, when Mr. Abraham was over there in Attorney Parker's office, he knew that your husband was to be the grantee; is that correct?

A. No, I am not positive he knew he was to be the grantee, but he definitely knew that Mr. and Mrs. Parker were buying the property so he would have known some of us got the check.

Q. Had you had any discussion with Mr. Abraham concerning the advisability of taking the property in your name or your husband's or your son's, or one of your assumed business names?

A. I don't remember whether I did or not.

The Court: Whom was that conversation with?

Mr. Buell: Attorney Abraham.

Q. When Mr. Abraham returned with the deed and the two checks, did he tell you anything about any conversation that he might have had with Paul Winans in Attorney Parker's office?

A. No; when he returned, we put the deed on

(Testimony of Lois Parker.)

record and wrote his name in and put the stamps on, and then we went to the bank, [462] I believe.

The Court: Then you went where?

The Witness: To the bank.

The Court: The bank?

The Witness: Yes.

Q. (By Mr. Buell): Did Mr. Abraham tell you anything about Paul Winans having mentioned a defect in the title to the property which you were purchasing or had just purchased?

A. He never did mention a defect at all. He mentioned a technicality.

Q. What did he state to you in connection with a technicality?

A. When we were finally back at his office and I had paid him he said that he felt that he should mention to me that Mr. Winans had said there was a technicality in the title but that he didn't think it was important.

Q. When you say "he didn't think it was important," are you stating that Mr. Abraham said that Paul Winans said that he, Paul Winans, didn't think it was important, or that Attorney Abraham didn't think it was important?

A. Attorney Abraham so advised me, that he thought it was a very small thing. He paid very little attention to it.

Q. When you say "a small thing," did he specify at all as to what the technicality was or what it was concerned with? A. No, he didn't.

(Testimony of Lois Parker.)

Q. You say that Mr. Abraham did not tell you of that until [463] after you had paid him for his services in connection with the matter?

A. That's right; I actually paid the office girl, I believe. I may have paid him at the outer office.

Q. And he did not tell you about the technicality over at the courthouse? A. No.

Q. Before you recorded the deed?

A. No, he didn't.

Q. Then were you at all concerned or worried about the technicality, as you described it, when you left Attorney Abraham's office?

A. I don't believe so.

Q. What did you do after you left his office? What did you do next?

A. I think I went back where we were staying.

Q. Do you think that was in Hood River?

A. Well, I don't know. It does not seem like it was, but I am not sure.

Mr. Jaureguy: Perhaps your notes in the diary state where it is.

Mr. Buell: That is right. I believe—I wonder if the Clerk——

The Court: Is that in her handwriting?

Mr. Buell: A portion of the entry on August 18th was in [464] her handwriting, your Honor. No, I mean September 11th.

The Court: Where is she supposed to have been staying?

Mr. Jaureguy: She said, "Staying at Oregon Motor Hotel tonight."

(Testimony of Lois Parker.)

The Court: All right. Does that refresh your memory?

The Witness: It does seem that I drove back to The Dalles, but I am not positive about it. I think so, though.

Mr. Jaureguy: We have her own handwriting here, your Honor.

The Court: Proceed.

Q. (By Mr. Buell): If you put that down in your own handwriting in the diary, that would be correct, would it not?

A. I am sure it would be, Mr. Buell.

Q. That entry is on——

The Court: She has already testified it would be correct. Why go into it any more?

Mr. Buell: All right, then, your Honor, I will pass it. As I recall, the portion of that entry that was in Mr. Parker's handwriting and the portion in hers was described yesterday, was it not?

Mr. Jaureguy: I am not sure of that.

The Court: Let us go on.

Mr. Jaureguy: It was on one of the dates, but I am not sure about this date.

Q. (By Mr. Buell): Mrs. Parker, had you stopped at the title [465] company before driving back to The Dalles that morning?

A. I don't remember. This was on the 11th?

Q. Yes. A. Well, I don't remember.

Q. You don't recall advising them that the deed had been placed of record and that you would like to get your title insurance as soon as possible?

(Testimony of Lois Parker.)

A. I don't believe that I went to the title company, but I don't know.

Mr. Jaureguy: Pardon the interruption, counsel, in the middle of a question, but referring to "before driving to The Dalles," I didn't recall any of that.

Mr. Buell: I think yesterday she recalled driving back to The Dalles that morning.

The Witness: I beg your pardon. When did I come back?

Mr. Buell: On the morning of the 11th after the deed——

The Witness: I am confused about the thing. I went back from there after it was done.

Q. (By Mr. Buell): When do you first, if at any time, recall going in to the title company following the time the deed was placed of record?

A. I recall going in to pick up the owner's policy.

Q. That is the only time that you can specifically recall?

A. I believe it is.

Q. At any time did you advise the title company concerning [466] what Mr. Abraham had told you about the technicality in the title?

A. No, I don't believe I did.

Q. Mrs. Parker, referring to the bookkeeping transactions of yourself and Mr. Parker, do you handle almost all of the bookkeeping for the two of you?

A. Well, he pays the check. I mean, he pays the bills quite often if I don't do it.

Q. In other words, you both write checks on

(Testimony of Lois Parker.)

your account. We understand that. A. Yes.

Q. With regard to keeping the record of expenditures, what they were for and for the purpose of supplying your accountant with information to prepare your tax statements, is that done by you or Mr. Parker?

A. Well, some of it he does. He makes notations once in a while if I am not there, nothing else.

Q. Now, you said, to shorten this up, as I recall in your deposition or from your deposition, don't you keep your accounting records pretty generally in the following manner, by keeping your deposit slips of all deposits into your bank account and keeping and segregating the checks that were paid and returned to you as to what the particular type of expense was for, and keeping your bank statements; isn't that about all of the accounting or bookkeeping information that you keep? [467]

A. Yes, that is just about all we have.

Q. Insofar as the stubs on your checkbook are concerned, you do not attempt to keep a complete record of all expenditures on the check stubs?

A. No.

Q. You do not make any attempt from month to month to balance your bank statements when they are returned to you?

A. Oh, I always check my bank statements.

Q. Would the Clerk hand the witness Exhibits 42 and 43, please.

(Exhibits were given to the witness.)

(Testimony of Lois Parker.)

Q. Referring first to Exhibit 42 Mrs. Parker——

A. Yes.

Q. That is the bank statement for the Phillips Construction Company segregated for August and September, 1951. What is Exhibit 43?

A. Well, that is the remainder of the account.

Q. The personal account?

A. Well, they were both personal.

Q. Well, is it not true that Exhibit 43 is the bank statement for Chet or Lois Parker, care of Oscar Parker, Route 3, McMinnville, Oregon?

A. Well, if you will notice, the other one says "Phillips Construction Company, Lois or Chet Parker, Route 3, McMinnville, Oregon."

Q. Yes; it speaks for itself. [468]

A. Yes, they are both personal accounts.

Q. 42 and 43, they are both personal accounts?

A. Yes, that is right.

Q. But those statements cover the months of August and September, 1951, for the Phillips Construction Company account and for the Chet or Lois Parker account, do they not? A. That is right.

Q. Now, as you state those are both personal accounts, would you please advise us, if you can, as to how or what arrangement, if any, you had with the bank so that the bank would know what check to charge against which account?

A. I don't think I had an arrangement with them about it.

Q. There was no arrangement that you know of?

A. Well, I don't remember any arrangement.

(Testimony of Lois Parker.)

If I didn't have enough money in one, I think they would take it out of the other one.

Q. For the purpose of trying to give us an idea of just how that worked, take for an example if you had \$15,000 in each account and drew one of these checks signed by either you or your husband, how would the bank know which account to charge it against?

A. I don't know. I don't know if that ever happened.

Q. Referring to those statements—may I approach the witness?

The Court: What is the significance of this testimony? What difference does it make if they paid it out of one [469] account rather than the other?

Mr. Buell: It goes, in the first place, to the question of the reason for separate accounts and withdrawals from one to place in the other, and it will be eventually tied down to the distribution of proceeds of this, the purchase price of the property.

The Court: Both accounts are personal accounts, according to the testimony, so what difference does it make if money is taken out of one account and put back in another account? Are you referring to the \$25,000 check?

Mr. Buell: Well, I am getting down to the hundred-thousand dollar deposit first of all, your Honor.

The Court: Was that taken out of her personal account and put in the Phillips Construction Account?

Mr. Buell: It was.

(Testimony of Lois Parker.)

The Court: It seems to me it is much ado about nothing, but go ahead.

Q. (By Mr. Buell): Referring to Exhibit 42, Mrs. Parker, on the second page where the statement shows an August 31, 1951, balance of \$132,000-some odd dollars, and from Exhibit on the Chet or Lois Parker account the statement showing a balance of August 31, 1951, of nineteen hundred-odd dollars, are you unable to give any explanation as to how a bank would know which account to charge to a hundred-dollar check against when it came in? [470]

A. Well, they probably have a perfectly simple way of doing it, but I don't know how they do it.

Q. Then, referring to Exhibit No. 42, on August 9, 1951, it shows a deposit in the account of \$100,000. Can you find that on the exhibit?

A. Yes.

Q. Referring to Exhibit 43 of the August statement, does that not show a debit of \$100,000?

A. Yes.

Q. Was that change of \$100,000 from one account to the other on August 9th made at the request of yourself, at the specific request of yourself?

A. Why, I am sure it was. No one had any right to change my money or do anything with it.

Q. You have stated that this is a personal account, that they were both personal accounts?

A. They are personal to my husband and myself, yes.

Q. Do you have any recollection of calling the bank and requesting them to take a hundred thou-

(Testimony of Lois Parker.)

sand dollars out of one account and putting it in the other?

A. I didn't call them and tell them that, no.

Q. Did you do it by check?

A. I had to give them a check, I think, to transfer, but that I don't know whether I did or not.

Q. Was that in contemplation of the purchase of the Winans [471] property?

A. No, that—this hundred thousand dollars has to do with a construction thing that we were thinking of; and since I was going to have more money in this other account and I had enough to take a hundred thousand dollars and put over for this thing, that is the reason I took the hundred thousand dollars. Now, if I had had \$156,000 in the personal account, to begin with, I would have probably put \$150,000 in there, but I didn't have that much. I only had a hundred to spare.

Q. Referring to the bank statement, on the deposit entries you have drawn a circle around a number of the deposits and put a notation of one kind or another in your handwriting off to the side, is that right?

A. Well, it is usually a little arrow to point at which one this is supposed to refer to.

Q. And that information as noted down there is a record upon which to prepare your income tax returns, isn't it?

A. Well, it refers to that so that I can tell what a deposit was for.

(Testimony of Lois Parker.)

Mr. Buell: Would the Clerk please hand to the witness Exhibits 50, 51, 52, 53 and 54.

(Photostats, individual income tax returns for the years 1950, 1949, 1948, 1947 and application for tentative carry-back adjustment, were thereupon marked [472] Exhibits 50, 51, 52, 53 and 54, respectively, for identification.)

Q. (By Mr. Buell): Mrs. Parker, referring to the exhibits which were just handed you, you will find the numbers stamped on the back of the last page of each exhibit where they can be seen. Exhibit 50 is a copy of the 1950 income tax return of yourself and Mr. Parker, is it not? A. Yes.

Q. No. 51 is a copy of the 1949 return of yourself and Mr. Parker, is it not?

A. That is right.

Q. No. 52 is a copy of the 1948 return?

A. Yes. Well, let's see, 1948, calendar year, and it says 85Y—54, I am sorry. Is that what you meant, the number?

Q. 54? A. Yes, for '48?

Q. '48? A. Yes.

Q. That, however, is an Application for Carry-back Adjustment on your account.

A. Oh, I am sorry, yes. Well, now, which one is it you want?

Q. 52 is the return for 1948.

A. This goes with this (indicating documents)?

Q. That is correct, that carry-back adjustment goes with that.

(Testimony of Lois Parker.)

A. Yes, and this is '47, A53. [473]

Q. Now, you advised us, did you not, in your deposition, Mrs. Parker, that the best record of the year-to-year or the best record of the logging equipment and trucks and the like that you and Mr. Parker owned from year to year would be the schedules attached to your income tax returns?

A. That would be the best, but I found an error in those years, and so I could not say they are all just right, but I think they are pretty good.

Q. And that that is the principal record that you keep of those items, is it not?

A. Well, this is the one that I give to the auditor, and I have to pick it up from here, there and somewhere else. I don't keep this record myself. I didn't have these until you asked for them.

Q. But the record is prepared by your accountant, Mr. Rich, from the information which you furnish them, and then he returns it to you, and you check it before signing it and filing it; is that not correct?

A. This year I am sorry to tell you I did not check it because I didn't have time, but usually that is the case. I try to do that.

Q. Didn't you also tell us in your deposition that that would be the best record of the dates of the acquisition and sale of various timber properties that you and Mr. Parker had acquired?

A. Well, yes, I am sure that would be the best one, Mr. Buell. [474]

Mr. Buell: Would the Clerk please hand Mrs.

(Testimony of Lois Parker.)

Parker Exhibits 35 and 36 which are the \$10,000 and the \$22,000—photostatic copies of the two notes.

(Documents were presented to the witness.)

Q. Mrs. Parker, would you please refer to Exhibit 35 which is a photostatic copy of the \$22,000 note and the mortgage attached to it. A. Yes.

Q. As I understand it, the originals of those two documents were prepared by you on one of your typewriters when the loan and agreement were made? A. That is right.

Q. Do you recall, or had you been a party to, or listened in on any conversations or discussions between Mr. Parker and Mr. Stegmann prior to November 20, 1950, concerning the proposed \$22,000 loan?

A. Well, I knew about it, but I can't say that I was there or that I heard what they said even. I think my husband told me about it.

Q. You don't recall Mr. Parker having ever mentioned to you prior to November 20, 1950, that he was going to make a \$22,000 loan to Mr. Stegmann, do you?

A. Well, I think I do, but I am not sure about it.

Q. When is the first time that you recall Mr. Parker making such a suggestion to you, that he was contemplating such a [475] loan?

A. I don't remember, Mr. Buell.

Q. But you think that he did mention it to you before the date of the loan?

A. Well, I am sure we talked about it because

(Testimony of Lois Parker.)

it had to do with actually what we considered my security money.

Q. What you consider your security money?

A. Well, it is a different fund. It is what we keep in cash and so, therefore, I know we talked about it because I thought we should have some interest or something on it.

Q. When you discussed the fact that you thought you should have some interest on it, Mr. Stegmann's name was brought up as being a person who might borrow some of the money, is that correct?

A. No, not the first time we talked about it, I am sure it wasn't.

Q. Well, now, as I understand it, at the time the loan was made and the note and the mortgage signed you had the \$22,000 in the drawer in your home?

A. I had more than \$22,000.

Q. But that was in currency?

A. Yes, in currency.

Q. And it had been there for some time, had it?

A. Yes, I had it quite some time.

Q. You had not withdrawn it from your safe deposit box for [476] the purpose of providing the funds for this loan to Mr. Stegmann?

A. Well, I don't recall about that, what I had it for, but I had it.

Q. But you don't recall whether or not you had Mr. Stegmann's loan in mind when you took it from the bank?

A. I could have had, but I don't know whether

(Testimony of Lois Parker.)

I did or not. I don't usually take it out and keep it, but sometimes I do.

Q. Well, did you have any other specific loan or use for the money in your mind when you took it out of the bank?

A. I don't know, Mr. Buell.

Q. Referring to the bank, was that the only—your safe deposit box was in The First National in McMinnville?

A. The one we are referring to was, yes.

Q. At that time did you have any other safe deposit box? A. No.

Q. Have you ever had any other safe deposit box since that time? A. Yes.

Q. Where?

A. I had one at the Bank of California.

Q. When did you first open that or obtain that safe deposit box?

A. I don't remember the date, but it was after we moved to our Clackamas home. [477]

The Court: After you moved where?

The Witness: To our new home on the Clackamas River.

Q. (By Mr. Buell): That was in about February, 1951, was it? A. Yes, it was.

Q. Would you please refer to the back of the promissory note that is attached to that exhibit?

A. No. 35?

Q. Yes; and are those, all of those figures in handwriting, in your handwriting? A. Yes.

Q. I wonder if you will, Mrs. Parker, please explain what those entries are?

(Testimony of Lois Parker.)

A. Well, the first entry, April 20, 1951, is \$1500 which I loaned to Mr. Stegmann. Do you wish me to go just right down the line?

Q. Yes.

A. And the next one put underneath is \$22,000, and then I drew a line, and that makes \$23,500. I have written down May, over here to the left-hand side. I don't know if that means the interest, \$140, in May, and then it says "Principal, \$2,300," and I drew another line, and that makes \$21,200.

Q. First of all, Mrs. Parker, referring to the one entry, "Interest, \$140," what was that placed on that particular note for?

A. On this note? [478]

Q. Yes.

A. Well, this was just the general indebtedness, and I suppose if he brought some money back I put it on there. I don't know.

Q. Well, does that represent interest that you collected from Mr. Stegmann?

A. Well, it is interest that I collected from him on something, yes.

Q. Is it your testimony that that interest was collected from Mr. Stegmann in May?

A. Well, I don't know, Mr. Buell. This date is not very good. I just really don't know what that was on there for.

Q. Well, does not the word "May" appear there?

A. Yes, it says May, but the May is opposite the \$22,000, so I don't know just what that refers to.

(Testimony of Lois Parker.)

Q. Seeing it there does not refresh your recollection at all?

A. No, it really does not. I figured on something and jotted these things down, and I just really don't know.

Q. Can you associate May with the \$2300 entry that you have noted just below the \$23,500?

A. Well, I don't know; maybe he paid it back in May or something, and I figured the interest on it; but I just don't know really what that means.

Q. Paid what back in May?

A. Well, he paid \$2300 it looks like because it says \$2300, [479] and I jotted the whole principal down, maybe all of it, or something; I don't know just what we did.

Q. Do I take it that you have no recollection of Mr. Stegmann having paid you the \$2300?

A. No, I can't remember when he came and paid me, but I am sure that he paid me this amount sometime.

Q. Well, then, can you recall any of the circumstances under which it was paid?

A. No, I couldn't. I may just have made a note and then finally got these things and written on them. I just don't know, Mr. Buell.

Q. I don't suppose you could testify, then, as to whether it was paid in cash or by check?

A. I can't remember getting cash or a check, either one, from him, but I probably got one or the other, surely. He would have had to pay me.

Q. With regard to the payment, you don't know

(Testimony of Lois Parker.)

whether that occurred in May or not, is that correct?

A. Well, I don't know. I don't know what—I just don't know what May is on there for. There is no other date.

Q. Would you explain, please, how the figure \$140 interest was arrived at?

A. Well, I think it was interest on the \$22,000 that I wanted, but I am not positive about it. It seems to me it was.

Q. From when until when?

A. Well, I think this was in November some-time until this May [480] time or this April time—May time, I think, but I just don't know. It may have included some of that interest maybe.

Q. What is the next entry below that? Is that the last?

A. No. Then after all those little connected business, well, then, there is one that says "September 20—'51, on principal \$19,973.75," and then you draw a line under that, and you subtract, apparently, and so that is \$1,126.25.

Q. Those are also your entries, were they?

A. Yes.

Q. Those were made, I take it, when Mr. Stegmann returned the check, the \$25,000 check?

A. Yes, that's right; that had to apply on that.

Q. Will you refer to the other note and mortgage for the moment, please. That \$10,000 note was the note given in connection with that loan commitment which Mr. Stegmann and Mr. Parker worked out, is that correct?

A. Yes.

(Testimony of Lois Parker.)

Q. And are there any entries on the back of that note? A. Oh, yes.

Q. On the back of the agreement, is it?

A. Yes.

Q. On the back of the agreement?

A. This looks awfully peculiar. It looks like it is printed backwards.

Q. Do you see the next page? [481]

A. Is that all right? You want me to read this part up here?

Q. Yes, the handwritten entries.

A. Yes, it says three checks, \$2,850 in by May 14, and interest \$150, and that makes \$3,000. Oh, it says, "Credit, \$2,300 balance of check for \$22,000 and \$140 interest to——" I suppose I put these little marks; I suppose it means the balance or something having to do with it.

Q. Doesn't this entry read: "Credit, \$2,300 balance of check for \$22,000,"—then can you read what that last is?

A. Those are just three oughts, I think.

Q. Oh, that is \$22,000? A. Yes.

Q. And then the figure \$140 and interest to \$22,000?

A. Yes, and then two checks, \$5,000 and \$26.25.

Q. All right. Now, referring to the notation \$5,000, two checks—or interest—\$5,625—or \$26.25, did you compute that interest?

A. Would you please tell me that again? Which checks are you referring to?

(Testimony of Lois Parker.)

Q. The bottom entry that refers to two checks, \$5,000, interest, \$26.25.

A. Oh, I suppose, probably.

Q. You say you suppose you did?

A. Well, I don't think anybody else did. This is my writing.

Q. When was that figure computed? [482]

A. When was it computed?

Q. Yes.

A. Well, I think it was computed at the time he paid us this \$25,000 check back.

Q. Then what is the answer above that, the \$2300 credit or balance of check \$22,000?

A. Well, I think what this is, but I am not positive about it, I don't ever recall getting cash or check either from Mr. Stegmann, and I think that he has brought me a check, and I have credited this to the \$2,850. These checks that he wrote, you understand, on this \$10,000, balance of whatever he brought me, I think went on his \$22,000 note, I think. The way it is, I am not positive. I have just really forgotten.

Q. Well, then, is it correct that that entry indicates that Mr. Stegmann brought you in a check or cash in a sufficient amount to repay the \$2,850 advanced for his purchase of the Johnson property, plus \$150 interest, and leaving a balance of \$2,300 which you could credit against the principal due on the \$22,000 check?

A. Well, it could be, Mr. Buell. I just don't know how this is exactly.

(Testimony of Lois Parker.)

Q. But, in other words, you can't—you still cannot specifically say that that was or was not the situation?

A. No, I don't remember at all. [483]

Q. Well, do you remember Mr. Stegmann having advised you of what his source of funds was with which he made that payment?

A. No, I can't remember how he paid me. I just don't know.

Q. Mrs. Parker, was it before or after May, 1951, that you acquired the Wrist timber and then apparently disposed of it to the McCormick Lumber Company?

A. I don't remember when it was, Mr. Buell.

Q. Mrs. Parker, on your 1951 income tax return, Exhibit No. 49, it indicates that the Wrist timber was acquired——

A. Just a moment, Mr. Buell. Did you say Exhibit 49?

Q. 49. A. The '49 one?

Q. No, it is the '51 return.

A. Oh, just a minute. Where do you wish me to look, please?

Q. I believe the first page of the return.

A. It says "Schedule of Depreciation."

Q. No, "Sales of Capital Assets."

A. Oh, here is this check, this \$25,000 and this smaller one. Yes, now, this is sales of capital assets, 1951.

Q. There is an entry there that the Wrist

(Testimony of Lois Parker.)

timber was acquired April 19th, 1951, and sold April 25th, 1951; correct?

A. Yes, that is what it says.

Q. That was the timber that you had acquired upon information furnished you and Mr. Parker by Mr. Stegmann, is that right?

A. What was the question again, please? [484]

Q. Didn't you acquire or locate and subsequently purchase that timber upon the advice of Mr. Stegmann who had first located it?

A. No, I didn't purchase it on his advice. We paid him a finder's fee for it, I think.

Q. He had located the timber that you subsequently purchased? A. That is right, yes.

Q. When did you pay him a finder's fee that you refer to? A. Well, I don't recall.

Q. I believe when your deposition was taken that you advised us that your income tax return would show the payment of the finder's fee to Mr. Stegmann. Can you find that on the 1951 return?

A. Well, those are all put together.

Q. All put together?

A. It wouldn't show on there separately, no. I was glad to pay him, though. I made \$3,000 on it.

Mr. Jaureguy: I did not get that last answer.

Mr. Buell: She made \$3,000.

Q. How much finder's fee did you pay to Mr. Stegmann? Can you recall?

A. Well, no, I don't recall, but it was not, I think, over \$200, but I don't think it was that much.

(Testimony of Lois Parker.)

Q. Well, now, there is a notation on the bottom of the \$22,000 mortgage reciting an advance of \$1500 to Mr. Stegmann on April [485] 20, 1951, the day after you acquired the Wrist timber.

Was there any connection between that advancement to Mr. Stegmann and his finder's fee?

A. It hasn't anything to do with his finder's fee, but it has to do with me selling the timber.

The Court: The day after she acquired it or the day after she sold it?

Mr. Buell: The day after she acquired it.

The Court: When did you sell the timber?

A. I think it was sold the 25th, your Honor, but I knew that it was sold.

The Court: You sold it a few days after?

A. Yes, it wasn't very long, but I knew they were going to take the price.

Q. (By Mr. Buell): That was April 25th that you sold it?

A. Yes, it was later than the check.

Q. So then you loaned that money to Mr. Stegmann on the strength of the profit that you expected to make on the resale of the Wrist timber?

A. Well, I wouldn't say I loaned it on the strength of the thing, but I knew I would make a profit, and I loaned him that much money.

Q. That was without consulting Mr. Parker?

A. Yes.

Q. Mrs. Parker, did you shortly, a month or so before the [486] trial here, furnish to Mr. Jaureguy

(Testimony of Lois Parker.)

a number of—an envelope full of cancelled checks and deposit statements for the year 1950-51?

A. Yes, I did, upon your insistence.

Q. Were those all of the canceled checks in your possession for the years 1950-1951 that you knew of?

A. The ones that I gave Mr. Jaureguy?

Q. Yes.

A. Your question is the ones I gave him were all I had?

Q. Yes. A. Well, I believe so, Mr. Buell.

Q. In other words, you do not know the whereabouts of any other checks for 1950 or '51 other than the ones that you gave to Mr. Jaureguy?

A. Well, I am not very careful after they are done by income tax, and I move them quite a lot, so I couldn't be sure, but that is all I know about it.

Q. I take it the same is true for the deposit slips that you furnished him at the same time?

A. Yes, those had been at the auditor's office and back and to Arizona, a number of places.

Q. As I understand it, you do not keep your bank statements as a permanent record at all?

A. No, they just wanted the individual ones, as a rule, and I think that my bank statements, too, I don't remember—you [487] mean like——

Q. Such as Exhibit——

A. Well, like these that you handed me?

Q. Like the two exhibits that I handed you, yes.

A. Yes. Well, yes, I keep them for a time. I gave you those.

(Testimony of Lois Parker.)

Q. Did you have any of your 1950 or 1951 bank statements together with these——

A. I don't know if I did or not. Didn't I send you some?

Mr. Buell: Well, I think, Mr. Jaureguy, if we can agree that there were not any bank statements among the checks——

Mr. Jaureguy: I am rather certain that you asked for these bank statements, for these two months in 1951, and I asked them for them, and they produced them, and that is all I can recall on it.

Now, as far as the checks are concerned, while I am on my feet, as I say, I probably have two or three or four in my file if you care to have them. They were furnished me on another angle of the case, and I figured that angle had disappeared, but you can have them if you want them.

Mr. Buell: All I was trying to ascertain was whether or not there were any bank statements that she knew of that were not included among the checks and deposit slips that she furnished to you.

Mr. Jaureguy: I wouldn't know that. I don't think she [488] furnished any of these, or she furnished no bank statements except those that are now in evidence.

The Witness: Well, I don't believe that I knew you wanted bank statements. I thought you wanted deposit slips for these bank statements.

Q. (By Mr. Buell): Do you know whether or not you have your bank statements for 1950-1951?

(Testimony of Lois Parker.)

A. Well, I don't know, but, you see, our house burned in 1951, and I didn't have very much left after that.

Q. Do you have any recollection of taking bank statements out and setting them aside when you bundled these checks together and sent them to Mr. Jaureguy?

A. No, I just can't remember about any more bank statements. I thought several I sent. How many years checks and so on did I send, Mr. Buell?

Mr. Buell: The checks cover a period from approximately November, 1949, through November, 1951.

A. November, 1949, and that would be some of the '49, all of the '50 and '51, then?

Q. Well, I don't think all of the checks were there, but there were a large number of checks for each of those years through all of the months.

A. Yes.

Q. Mrs. Parker, referring to the—well, I probably should not get into these checks at this particular time, your Honor. I [489] have a few other brief questions that I can go into at this time.

Mrs. Parker, do you recall anything pertaining to the accident in May of 1950, when the Caterpillar tractor slid off the road and was damaged, and subsequently an insurance loss was paid on it, and Mr. Parker purchased the salvage?

A. Well, I remember about a D-6 Caterpillar, and I imagine it would have been about the time, and it was pretty badly damaged.

(Testimony of Lois Parker.)

Q. Didn't that occur up around the area known as Square Top?

A. Well, I think that this D-6 was upset, well, I thought up around Skamania County.

Q. Disregarding the Caterpillar or the tractor for the time being, didn't you and Mr. Parker in the summer of 1950 own a substantial amount of timber up in the vicinity of Square Top Mountain down in Tillamook County?

A. 1950, you say?

Q. Yes.

A. Well, we have owned timber up there for quite some time, and I think we still had timber there then.

Q. There was a considerable amount of timber in Section 7?

A. Yes, that was the salvage timber.

Q. Do you know with reference to that timber that we are just referring to in Section 7 and around Square Top, do you recall whether or not you were conducting any logging operations [490] up there in the summer of 1950?

A. Well, I think my deposit slips would show whether or not I was having any money in them or not.

Mr. Buell: May it please the Court, all of the checks and deposit slips which were furnished by Mrs. Parker and Mr. Jaureguy have been marked as one exhibit number. For the purpose of referring to some of these deposit slips, I suggest—

The Court: Mark them A, B, C, and D.

(Testimony of Lois Parker.)

It is 12:00 o'clock now. Mark it up during the recess.

(Discussion off the record.)

(Noon recess taken.) [491]

Afternoon Session

LOIS PARKER

thereupon resumed the stand as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

(Continued)

By Mr. Buell:

Q. Mrs. Parker, do you recall a tract of property that you and your husband acquired in Washington, either in Clark or Skamania County, which was sold to the Weedman Lumber Company sometime in 1951, the one that has been referred to in the Cottrell tract in Mr. Parker's testimony?

A. What do you wish me to recall about it, Mr. Buell?

Q. Do you recall the transaction?

A. Do I recall—

Q. Do you recall that you had the timber and that it was sold to the Weedman Lumber Company?

A. Yes, I recall that.

Q. Do you recall whether or not Mr. Stegmann

(Testimony of Lois Parker.)

did anything with reference to that timber towards the sale to the Weedman Lumber Company? Did it show it to any representative of that company?

A. I don't recall whether he did or not, but I believe that he may have shown them the corners.

Q. You say you believe he may have shown it? [492]

A. He may have shown them the corners. I am not positive about it.

Q. Has your recollection in that respect been refreshed since the time your deposition was taken?

A. Well, I don't know, Mr. Buell. It could have been.

Mr. Buell: Could the witness be handed Exhibit 41, please, which is the \$382 check in payment of Mr. Stegmann's services?

Mr. Jaureguy: What is the number?

Mr. Buell: 41.

(Document was presented to witness.)

Q. Do you recall that check, Mrs. Parker?

A. Yes, I have seen this check.

Q. Do you recall or were you present at the time that it was given to Mr. Stegmann?

A. I don't remember, Mr. Buell.

Q. You do not have any recollection at all as to when or where it was given to Mr. Stegmann?

A. Well, it just seems to me that it was in Vancouver, but I don't remember; but I think I was there, but I am not positive about that even. It seems to me I was.

(Testimony of Lois Parker.)

Q. It is your best recollection, then, is it, that the check was delivered to Mr. Stegmann at Vancouver?

A. Well, as well as I know, it was.

Q. You cannot be positive, but that is your best recollection? A. I think so. [493]

Q. Referring to the \$22,000 note and mortgage again, you know what I am talking about when I refer to that?

A. Yes, I assume so. There is only one.

Q. Did I understand you correctly this morning that you believed you recalled some discussion about the prospects of making that loan with your husband some time before that loan was actually made and the money delivered?

A. I don't recall that I had a definite conversation with him about that one, but I may have had, but we did talk about loaning some money that we had saved there.

Q. I am sorry if I appear confused, but could I have that last answer read back?

(Answer read.)

Q. (By Mr. Buell): Had you had any discussion at all with Mr. Stegmann within two or three weeks immediately prior to November 20th about his possibly getting a loan from you or Mr. Parker?

A. I had had no discussion with Mr. Stegmann about the loan until the time it was made.

Q. So, then, when you took the \$22,000, or I believe you said it might have been a little more than

(Testimony of Lois Parker.)

that, when you took that from your safe deposit box you brought it home for the purpose of loaning it to somebody, but you did not know who?

A. No, I would not say that.

Q. Well, is it that you brought it home for the purpose of [494] either loaning it or putting it to some use where it would draw interest; isn't that right?

A. I think my husband told you that.

Q. Was it your idea or his idea to take the money out of the bank?

A. I believe he told me to bring it, but I don't know, Mr. Buell.

Mr. Buell: If the Court please, I had contemplated asking the witness some questions with reference to the bank deposit statements and checks, but in their present form it would take quite a bit of extra time to try to run through them. We propose to offer them as an exhibit and would like to have the opportunity of having a ledger made so that the checks are listed chronologically and by number as to the payee, and I will have that done during the recess that the Court indicated this morning.

The Court: All right.

Mr. Buell: That would close our direct examination.

The Court: Mrs. Parker will be here anyway.

Mr. Buell: We would like to offer in evidence Exhibit No. 43, the bank statement of Chet or Lois Parker's account, Exhibit No. 74——

(Testimony of Lois Parker.)

The Court: I think it would be 76, wouldn't it? Oh, 76 is in. What is 74?

Mr. Buell: 74 are the checks. [495]

Mr. Lindsay: 74, according to my notes, is three exhibits from the Lois Parker deposition.

The Court: What do you want to offer?

Mr. Buell: The assignment of the option.

Mr. Strayer: I have got 74 as the assignment.

Mr. Lindsay: There is a No. 17 that is the assignment, and there is also an assignment in Exhibit 74.

The Court: All right. Call that 74-A.

Mr. Strayer: 74-A?

The Court: Yes, it is admitted.

Mr. Buell: And Exhibits 50 through 54, which were the income tax returns.

The Court: Any objection to the income tax returns, Mr. Jaureguy?

Mr. Jaureguy: No, I have no objection.

The Court: All the exhibits offered are admitted.

(Photostatic copy of Chet or Lois Parker Bank Statement Account previously marked Plaintiff's Exhibit 43 for Identification, was thereupon received in evidence.)

(Photostatic copies of Income Tax Returns previously marked Plaintiff's Exhibits 50, 51, 52, 53 and 54, were thereupon received in evidence.) [No. 54 is U. S. Form 1045.]

(Document, Assignment of Option, dated August [496] 13, 1951 (previously identified as

(Testimony of Lois Parker.)

Exhibit 74) was thereupon marked Plaintiff's Exhibit 74-A for Identification and received in evidence.)

Mr. Buell: Also Exhibit 27, copy of the deed, Exhibit No. 27, which was brought to Mr. Abraham's office.

The Court: All right. Also admitted.

(Document, carbon copy of Bargain and Sale Deed, previously marked Plaintiff's Exhibit 27 for identification, was received in evidence.)

The Court: Mr. Lindsay?

Cross-Examination

By Mr. Lindsay:

Q. Prior to this suit commencing, Mrs. Parker, had you ever personally met or conversed with any of the Winans, Ross Winans, Paul Winans, Audubon Winans, Linnaeus Winans, or Ethel Winans?

A. No, those names I have never spoken to or met them.

Q. All right. Did you ever talk with any one of those Winans over the telephone?

A. No, I don't believe so, other than I related this morning.

Q. What did you relate this morning?

A. I related that Mr. Winans announced himself as being the one who called my husband. Other than that I never heard his [497] voice even.

Q. When would you place that telephone call?

(Testimony of Lois Parker.)

A. I don't remember, Mr. Lindsay.

Q. Where were you staying at the time you received that telephone call?

A. Well, I can't remember that.

The Court: That would not be evidence, anyway, if the operator says that Mr. Winans is calling.

Mr. Lindsay: I was asking the witness where she was at the time she received the telephone call, your Honor, where she was staying, in Vancouver or McMinnville.

The Court: Do you remember?

The Witness: No, I do not, your Honor.

The Court: All right. Go ahead.

Q. (By Mr. Lindsay): I am asking you whether it would be possible that you received that telephone call on the morning of September 16th?

A. I couldn't be sure, Mr. Lindsay.

Q. Is it possible the time that you heard Paul Winans speak on the phone was the morning of September 16th?

A. Well, it is very possible. Mr. Winans called my husband several times after the deed was delivered.

Q. I am referring to this one conversation that you said you picked the phone up and you heard somebody apparently identify himself as Paul Winans and ask for your husband. [498]

The Court: She did not so testify at any time. She merely testified that she asked who was calling and the operator came back and said, "Mr. Winans is calling."

(Testimony of Lois Parker.)

Mr. Lindsay: I did not understand her to so testify.

Q. Now, were there any other phone conversations that you know of between Paul Winans and your husband?

A. I can't place the date just definitely, but I think there were some prior to the time that the deed was delivered, also. Now I think I was remembering that time, but I won't say for sure.

Q. Turning to your role in the purchase of this Winans timber, I want to see if I understand the evidence generally in so far as you are concerned.

First of all, with respect to the option, you read it over and were familiar with it, is that correct?

A. Well, I read it over, but I couldn't tell you right now what it says.

Q. All right; but at that time you did read it over?

A. Yes, we both read it, my husband and myself, the night of the 13th.

Q. And you have had a copy of that option in your possession?

A. Oh, definitely, that is what I paid the money for.

Mr. Lindsay: Now which—was that the copy of the option she had? Was that the one in Lois Parker's deposition in Exhibit 3? Do you recall? I am trying to get the physical [499] option that she had in her possession.

Mr. Jaureguy: Right offhand I do not know any more about it than you do.

(Testimony of Lois Parker.)

Mr. Buell: I believe that was a photostatic copy that the Parkers had furnished us through their attorneys at McMinnville. Would you have Exhibit 74?

Mr. Jaureguy: No, I do not have—74, I think, are the checks.

Mr. Buel: No, 47.

Mr. Lindsay: I want the copy of the option that the Parkers are supposed to have had.

Mr. Jaureguy: Mine are in the hundred bracket.

The Court: Has it been introduced in evidence, the option?

(Discussion off the record.)

Mr. Lindsay: I want the copy of the option.

The Court: Has that not been introduced yet?

Mr. Lindsay: I do not know which one has, but I want to get the particular one which the witness on her deposition testified was the option which she had in her possession.

The Court: The pleadings admit the execution of the option and likewise the stipulation of admitted facts has attached to it a photostatic copy of the option.

Mr. Lindsay: Your Honor, the point I am making—perhaps I might short-cut it by asking the witness this question:

Q. The copy of the option that you had in your possession [500] had the signature of Walter Stegmann under the line, under the word “Approved”?

(Testimony of Lois Parker.)

The Witness: Did you say do I know if it does have?

Q. Did it have; do you recall whether it did or not? A. No, I don't, Mr. Lindsay.

Q. Well, that is the purpose for which I want the document which they had.

The Court: Why can't you take a photostatic copy?

Mr. Lindsay: I can take a photostatic copy.

The Court: If you will get one.

Mr. Lindsay: I do not have that exhibit. It is not mine.

The Court: Show her this one.

(Document presented to witness.)

The Witness: Yes.

Q. (By Mr. Lindsay): Does that have Walter Stegmann's signature under the word "Approved"?

A. Yes, it does, Mr. Lindsay, as near as I know.

Mr. Lindsay: Well, then, if your Honor please, I would like to get the copy produced at the deposition.

The Court: Is there any dispute about the fact that Walter Stegmann signed that option?

Mr. Lindsay: It is not——

The Court: All right, then; what are you worrying about?

Mr. Lindsay: Because, your Honor, I think there is a connection between that option and the notice of the exercise [501] of the option, the next document involved.

(Testimony of Lois Parker.)

The Court: Well, show the next document.

Mr. Buell: Here is a photostatic copy of the option without the signature.

Mr. Lindsay: Is there any number on it?

Mr. Buell: No, just an extra copy that I had in my file.

The Court: Do you want one with or without the signature?

Mr. Lindsay: I want one without the signature.

The Court: You want one without the signature?

Mr. Lindsay: Yes, I do.

Mr. Buell: I just gave it to him.

The Court: Show it to her.

(Document given to the witness.)

The Court: What exhibit does she have in her hand?

The Witness: It is not marked, your Honor, unless it is a "C" on it, perhaps.

The Court: What do you want that one numbered without the signature?

Mr. Buell: Well, I suggest that it be marked as 74-B.

The Court: All right. Mark it.

Mr. Buell: It is a photostatic copy of one of the exhibits attached to the Lois Parker deposition.

(Document, carbon copy of Option, was there-upon marked Plaintiff's Exhibit 74-B for identification.) [502]

Mr. Lindsay: The point I am trying to make,

(Testimony of Lois Parker.)

your Honor, is at the time of the deposition we requested a copy of the option they had had in their possession and which at that time was introduced and which did not have the signature of Walter Stegmann underneath the line "Approved."

The Court: You have got a photostatic copy of it.

Mr. Lindsay: I do not know if I do or not. If Mr. Jaureguy will stipulate that that is the same as the exhibit I saw at the time of the deposition, I will be——

The Court: All right. Will you so stipulate?

Mr. Jaureguy: No, I will not stipulate. I do not know. I am certainly not disputing it, though, but I cannot stipulate.

Mr. Strayer: What is your recollection?

Mr. Jaureguy: I have no recollection.

Mr. Ryan: Your Honor, we have not seen all of these as they have gone in. At least I have not. Is there an option in evidence now with a signature?

Mr. Lindsay: No, there is not.

The Court: There is in evidence, and nobody has to prove it any more, and we are not going to have any more proof of a document that has been admitted by stipulation. Let us forget about putting in all kinds of exhibits after they have been admitted in evidence. Let me see that document.

(Document produced.) [503]

The Court: Well, I find that this photostatic copy of an option which is not signed is a duplicate original of the option which was signed.

(Testimony of Lois Parker.)

Mr. Lindsay: With reference to the signature of Walter Stegmann?

The Court: That is right.

Mr. Lindsay: All right; I will proceed along.

Q. The next document in connection with the Winans transaction is an assignment of this particular option which you drew? A. Yes.

Q. And the third document would be the Notice of Election? A. Yes.

Q. As I recall, when your husband returned from Hood River where he had been on the 18th, he showed you a copy of this Notice of Election?

A. I gave Mr. Jaureguy the copies that I had. I don't know which copy it is.

Q. All right. In the copy of the Notice of Election you looked at, did it have the signature of Walter Stegmann under the top paragraph in the document?

A. I don't know, Mr. Lindsay. It had a signature on it.

Mr. Lindsay: Will you, your Honor, permit me to go ahead on this?

The Court: What are you talking about, the exercise of [504] the option?

Mr. Lindsay: Yes, I am.

The Court: That is already admitted in evidence, isn't it?

Mr. Jaureguy: I produced it here and turned it over to Mr. Buell, and my understanding is that he entered it in evidence, and that is the one that the

(Testimony of Lois Parker.)

Parkers gave me. That is the one that was brought back from Hood River.

The Court: What number is this?

Mr. Lindsay: The one put in evidence is 307, which is the one we brought, which has the signature of Walter Stegmann on the top line. I want to get the copy which has not the signature of Walter Stegmann.

The Court: What number is it?

Mr. Buell: It is No. 26, not signed, but it was in.

Mr. Lindsay: Would you show Exhibit 26 to the witness, please?

The Court: Has that been admitted?

The Clerk: Yes, your Honor, that is in.

Q. (By Mr. Lindsay): That is the one which you had supplied to your counsel, through your counsel to us, as a notice of election which you had in your possession?

A. I couldn't say, Mr. Lindsay. I have no idea. These things have all been handed around from Mr. Marsh and Mr. Jaureguy, and I just don't know. There are so many papers of this [505] option and this election to purchase that I don't know.

Mr. Lindsay: May I ask Counsel whether or not the copy of the notice of election which he has produced here had a signature of Walter Stegmann under the line at the top paragraph?

Mr. Jaureguy: It did not have any signature at the top paragraph. I think it had a signature down in the lower left-hand corner.

(Testimony of Lois Parker.)

The Court: What did you say?

Mr. Jaureguy: I think that the document which I produced yesterday or the day before and turned over to Mr. Buell was a white—it looked to me like original typewriting, but at the top where there was a line there was no signature.

The Court: That is this one (indicating document)?

Mr. Jaureguy: Down in the lower right-hand corner there were two signatures, and in the lower left-hand corner there was one signature.

The Court: That is Exhibit 26, and it has been admitted in evidence.

Mr. Jaureguy: That is it.

Q. By Mr. Lindsay): Then your next occasion with this transaction is when you came to Hood River on September 10th to see Abraham?

A. I got the check to pay Miss Winans on Sunday before that.

Q. All right. Why did you get a cashier's [506] check?

A. Well, I had to check the money, and they didn't want my personal check.

Q. Who did not want your personal check?

A. The Winans didn't want my personal check.

Q. How did you know they did not want your personal check?

A. Well, I don't know; I think he had told my husband, or some reason, but that is the reason we didn't have that so I had to take something from

(Testimony of Lois Parker.)

the bank to show that this was the money when he gave me the deed.

Q. The basis you got it was Paul Winans told your husband that?

A. I wasn't there when he told him, but I—he didn't want my personal check so I had to take it like in cash, only I didn't want to just take \$95,000 in cash.

Q. But you understood the basis for getting the cashier's check was some conversation between Paul Winans and your husband?

A. Well, that was my husband, Mr. Lindsay.

Q. Had you ever met Attorney Abraham before?

A. No, I never had.

Q. And, as I understand, he had been an attorney in a business deal in which your husband had been involved some time before that?

A. That is true. He represented, I think, both my husband and the man that we bought the log dump from in Hood River. [507]

Q. When you went in to see him, did you tell him that you were Mrs. Chet Parker and that he had done or helped do some work for your husband before?

A. As I remember the first time I went in the office, I introduced myself to his office girl because I think Mr. Abraham was not in. I am almost sure that is the way it was, and I told her that he had done work, and my husband sent me in there, and would he be in in the afternoon.

Q. So you do not know whether or not when he

(Testimony of Lois Parker.)

was speaking with you on the afternoon of Monday, September 10th, that he knew your name was Mrs. Parker or not?

A. Well, as I said here, Mr. Lindsay, I couldn't swear that he knew my name, but I just don't. Most office girls would say, "Mrs. Parker is here, and she wants to see you."

Q. This was the first time you met him?

A. Yes.

Q. You walked into his office, and what did you ask him specifically to do for you?

A. You mean when I saw Mr. Abraham in the afternoon?

Q. Yes, the first time.

A. I think he came in the outer office, and he asked me, he asked me or we talked, and I said that we were closing a transaction, and I wanted him to finish the thing for me, the sale or the purchase, whatever you call it.

Q. That was just a conversation in the outer office there? [508]

A. I think so. I think there was no one else in there, and I told him I would have to wait a while. The deed was not over yet.

Q. And then, as I understand it, Mr. Stegmann brought the deed over later?

A. That is right, that same evening.

Q. Then you went into Mr. Abraham's office?

A. That is right. I took the deed into Mr. Abraham's office.

(Testimony of Lois Parker.)

Q. What documents at that time did you turn over to him?

A. Well, I know I gave him the deed because he leaned back in his chair and looked at it.

Q. Did you show him the option?

A. I don't think I even had the option with me.

Q. Did you show him the assignment?

A. I don't recall doing so.

Q. Did you show him a notice of election? Now, when I refer to each of these documents, I am referring to the exhibits which I just showed to you.

A. Yes, well, I don't recall doing so, Mr. Lindsay.

Q. The only document which you gave to Attorney Abraham was this copy of a deed which Stegmann had brought over to you?

A. I may also have given him a title report.

Q. The physical title report itself?

A. I think that I gave him a—I still have the copy—I think I gave him, you know, what do you say? [509]

Q. Preliminary letter?

A. Yes, to sanction the main paper.

Q. The one you got on August 16th?

A. I don't know when I got that.

Q. Would that have been the preliminary title report which you obtained on August 16th or not?

A. I don't know when we obtained it. It was the only title report we got.

Q. You may or may not have shown that to him Monday afternoon? What was your answer on that?

A. I am not positive. I very well may have.

(Testimony of Lois Parker.)

Q. But you did have that physical document with you at that time? A. Yes, I did.

Q. Did Mr. Abraham examine the copy of the deed? Did he read it over? A. Yes, he did.

Q. Did he explain it to you? A. No.

Q. Did he ask any questions about it?

A. He may have asked me if it was a Bargain and Sale deed or if I knew what one was. I am not positive about it.

Q. Well, was it—if you are not positive, what would your reply to that have been?

A. It would have been that I didn't know what a Bargain and [510] Sale deed was supposed to be like. I wanted him to look at it.

Q. Is that the only explanation he made of this copy of the deed you gave to him?

A. He didn't make an explanation.

Q. He asked you no other questions with respect to the prospective deal which you were asking him to close?

A. I don't think he asked me many questions at all that night.

Q. The next morning when you met Attorney Abraham again, was it at the courthouse?

A. No, I met him first in his office.

Q. You went over to the courthouse from his office?

A. You mean did Mr. Abraham and I go to the Courthouse?

Q. Yes. A. Yes, we did.

Q. At that time did you hand him the physical

(Testimony of Lois Parker.)

preliminary title report that we have been referring to here?

A. He had one, Mr. Lindsay. I don't know whether I handed it to him that morning or the night before.

Q. But when he went to check whether certain of the exceptions had been taken care of he had the insurance title report, is that correct? He had the title company's preliminary title report?

A. I don't know how else he would have known what the reservations were, Mr. Lindsay. [511]

Q. I suggest to you, could it have been possible that the reservations might have been typewritten out on a piece of paper?

A. It is entirely possible.

Q. About the revenue stamps, do you know why it was that the seller, Paul Winans, or the Winans family didn't put the revenue stamps on themselves?

A. No, I don't recall the reason.

Q. But you understood the arrangement to be that they would give you a check for them?

A. It must have been the arrangement because we bought them, but I don't know why.

Q. You don't know who made that arrangement?

A. No, I do not.

Q. Well, did you know how many, how much of the check your attorney should bring back to you by reason of those revenue stamps?

A. I didn't even know how many revenue stamps to put on. We had \$125,000 worth because I didn't know if you put on that the amount that you paid for

(Testimony of Lois Parker.)

his option and everything or just the amount of the stamps. I didn't know how you bought revenue stamps.

Q. Was it your understanding that the Winans were going to give you the revenue stamps for \$125,000?

A. Oh, no, that never was my [512] understanding.

Q. What was your understanding?

A. I don't know, Mr. Lindsay, what it was.

Q. With reference to the refund which you were supposed to get by reason of the additional acreage reserved by the Winans, did you instruct your attorney as to the amount of the check he should receive?

A. I don't remember about that, Mr. Lindsay.

Q. Did you tell him he was to receive a refund check?

A. Oh, yes; I knew there was a refund because they bought extra land other than the reserved area, I mean other than the reserved area excluded.

Q. What is your understanding as to when that was arrived at, as to the amount of that check?

A. I thought it was probably arrived at when they got the, what do you say, the description all set out and figured up. I don't know when they arrived at it. It was so much per acre, I believe.

The Court: It was so much what?

The Witness: Per acre.

Q. (By Mr. Lindsay): What was your understanding on the method by which that amount was determined?

(Testimony of Lois Parker.)

A. Well, I don't understand how surveyors do that. I don't know.

Q. Who calculated that amount?

A. Well, I suppose Mr. Stegmann and the man that represented [513] Mr. Winans. I don't know.

Q. Do you know where they would have, at what physical place they would have arrived at those calculations?

A. No, I don't, Mr. Lindsay.

Q. Would it have been possible for them to have arrived at it in Vawter Parker's office on Saturday, August—September 8th?

A. It is possible, or maybe they would have had to go to an office and use one of those—there is some sort of little instrument that goes around that I saw in the Farm Security Office one time. They have a little thing that they can measure and see the fields. Maybe they had to go and do that; I don't know.

Q. Did you have knowledge that Mr. Stegmann and Mr. Haynes had been in the title insurance office on Saturday morning, September 8th?

A. No, I did not have any knowledge where they were, Mr. Lindsay.

Q. You went over to Vawter Parker's office, is that correct, from the courthouse?

A. On the 11th I did, yes.

Q. And you went into the little room where his girl is and asked if you could see him; is that correct?

A. I went into the outer office and asked if Mr.

(Testimony of Lois Parker.)

Parker and Mr. Abraham were in the inner [514] office.

Q. Then you went into the inner office?

A. That is true.

Q. While you were there in the presence of Mr. Abraham and Mr. Vawter Parker, did you engage in any conversation concerning the refund check?

A. Oh, quite possibly.

Q. What would that have been?

A. Well, I don't know, Mr. Lindsay.

Q. Do you recall how you left Vawter Parker's office?

A. Yes, I left by his private door, private entrance.

Q. You left by the private entrance?

A. Yes, there is two doors, you understand; one that goes out of the hall to his private office, and one that goes out of the hall to his outer office.

Q. If you leave by the private entrance, you do not go into the waiting room again; is that correct?

A. That is true.

Q. Does Walter Stegmann owe you any money today? A. Yes.

Q. Do you know how much that is?

A. Well, I knew a few moments ago before lunchtime, but I have forgotten the amount.

Q. Can you tell us approximately how much it is?

A. I think it is \$1200, but I have forgotten.

Q. \$1200? [515] A. I think so.

(Testimony of Lois Parker.)

Q. Of what is that sum made up?

A. Well, that is the balance of that note after the \$25,000 is applied.

Q. Did you ever make a demand on Stegmann for that balance? A. Yes.

Q. When would you have done that, Mrs. Parker?

A. Several times.

Q. Well, when was the first time?

A. I don't remember.

Q. Have you done so in writing?

A. I think so.

Q. Do you know whether it would have been before April 26, 1952, the time we first took Walter Stegmann's deposition in this case?

A. I don't remember, Mr. Lindsay.

Q. How many demands have you made on him, Mrs. Parker?

A. Well, I think I made one in writing that I remember distinctly of, and I don't know how many others. I have not seen him very often.

Q. Do you recall when the second mortgage on Stegmann's house was due? A. Yes.

Q. On the house Stegmann was living in, do you know when that was due? [516]

Q. Yes.

A. Did you say the second or first mortgage on it?

Q. As I understood, you hold the second mortgage on Stegmann's house?

A. I took up a first mortgage, also.

(Testimony of Lois Parker.)

Q. Well, let us just deal with the second mortgage first. Do you recall when that was due?

A. No, I don't recall.

Q. Did you make a demand on Stegmann for that amount?

A. Well, I don't think it was demanded before it was due.

Q. Well, subsequent to the time—is it due now?

A. Well, I don't remember that even.

Q. You say you purchased the first mortgage?

A. That is right.

Q. That would have been at The First National Bank in McMinnville? A. Yes.

Q. At the time you purchased it, was the mortgage due and owing?

A. Are you referring to the first or second mortgage?

Q. I am referring to the first.

A. The first mortgage, yes, was due and owing.

The Court: But you don't know the date, is that right? You don't know when you paid The First National Bank off?

The Witness: Yes. [517]

The Court: When?

The Witness: I think it was in 1951, in March or April, after we returned.

Q. (By Mr. Lindsay): I moved on to that mortgage, but I should state—that balance which you say Stegmann still owes you of, was it about \$1200?

A. Well, my recollection is what I saw in the

(Testimony of Lois Parker.)

back of that this morning, and it seems to me it was.

Q. I won't bind you to that figure, but there is an amount such as that. Is that on the \$22,000, November, 1950, note?

A. That is the balance of all the money that he owed us due to this loan commitment and these notes, and I applied all the money he gave me back on it, and there was still some due, and that is the amount due.

Q. You cannot identify whether that is on the November note or the May, 1951, note? Is that right?

A. No, I think those were—I made him pay the checks first. Those were paid, and the rest of it, I think, is on the \$22,000 note.

Q. So the balance owing would be on this November, 1950, note, is that correct?

A. I believe so, Mr. Lindsay.

Q. Now, on that particular note I notice you took a mortgage on some particular equipment. Where is that equipment today?

A. I don't know, Mr. Lindsay. [518]

Q. Have you made any efforts to collect on that equipment? A. To repossess it?

Q. To take repossession of it? A. No.

The Court: Did you loan Stegmann any money after September, 1951?

The Witness: No, sir.

The Court: Did he make any payments except that \$25,000 payment, after September, 1951?

The Witness: No, sir; he did not.

(Testimony of Lois Parker.)

The Court: There have been no financial transactions between you and Mr. Stegmann subsequent to the time that he turned back the note and the check for \$25,000?

A. We did repossess his house down there that we had a first and second mortgage on. That is the only one, though.

Q. (By Mr. Lindsay): In connection with that repossession, did you file a suit to do that?

A. No, Mr. Crow handled that in McMinnville.

Q. Mr. who?

A. Mr. Crow, Mr. Lloyd Crow.

Q. Well, on those notes, that May, 1951 note, the loan commitment, that had a promissory note, didn't it? A. That is true.

Q. And you just indicated that you have collected all that money on that? [519]

A. When I got the \$25,000 back he only had two checks out, and I deducted those from the twenty-five and applied the rest of it to the \$22,000.

Q. Did you ever return that note to Stegmann?

A. Well, I don't believe so, because Mr. Jaureguy has it, and there was only one.

Q. By the way, on that \$10,000 loan commitment, do you recall the conversations leading up to it? A. Not too clearly, no.

Q. Do you know why Stegmann wanted that loan commitment?

A. I don't really know that I do.

Q. I am sorry. I didn't hear your answer.

A. I don't, I am not sure that I do know; no.

(Testimony of Lois Parker.)

Q. Continuing along on the note, did Stegmann ever say what he wanted it for in your presence?

A. Which note are you referring to, Mr. Lindsay?

Q. The \$10,000 loan commitment made in May, 1951.

A. No, I don't believe I knew just exactly what he wanted it for.

Q. That mortgage you took in connection with that note which you now say has been paid off, has that mortgage ever been satisfied?

A. I don't know what you mean by a mortgage. You mean on his house?

Q. No, I am referring to the equipment involved in the May, [520] 1951, loan, which, I believe, was the two Carco winches and a 'dozer blade.

A. Well, I marked that note "Paid." There isn't any more due and owing. I mean, I don't hold, as you say, a mortgage on that any more, and when he paid the \$25,000 he didn't owe us any more money, and I just canceled it. I didn't want to do any more with it.

The Court: Was that mortgage recorded?

Mr. Lindsay: I don't know, your Honor. I was just going to find out.

Mr. Ryan: The testimony shows it was not.

Mr. Jaureguy: No, it was not.

Q. (By Mr. Lindsay): I meant to ask you, do you have any experience at all in buying timber, Mrs. Parker? A. In buying timber?

(Testimony of Lois Parker.)

Q. Yes.

A. I am afraid that I couldn't very well go out and buy ten million feet of timber, no.

Q. I think in your deposition you testified that you were not able to evaluate any timber holdings?

A. Well, if you had one small tract I might be able to if I thought I knew pretty well about it, but not a large tract, no, not at all.

Q. Your maiden name was Hutchins?

A. Yes. [521]

Q. And your father is Roy Hutchins?

A. My father's name is Thomas Roy Hutchins.

Q. Thomas Hutchins?

A. Thomas Roy Hutchins.

Q. What business is he in?

A. He is retired.

Q. He is retired? A. Yes.

Q. He has not, say, in the year 1951, engaged in logging activities?

A. I don't think my father has ever engaged in logging activities himself.

Mr. Lindsay: That is all.

The Court: We will take a recess.

(Short recess.)

Mr. Lindsay: I was just going to say I had found a copy of the Lois Parker deposition, Exhibit 3, which has the photostat, I think, of the document which was given to the witness which they produced in answer to the option which they had in their possession.

(Testimony of Lois Parker.)

The Court: It is unnecessary. All right, Mr. Ryan.

Cross-Examination

By Mr. Ryan:

Q. Mrs. Parker, do you recall that after the note of May, 1951, [522] which is in the amount of \$10,000—that it could be drawn upon the amount \$10,000—that Mr. Stegman paid you back moneys on that note in the sum of \$2300?

A. Yes, I know that he paid me some back.

Q. Do you know the source of that money?

A. I am sorry——

Q. Do you have any knowledge of the source of that money?

A. Well, no, I am not sure, but I think that he brought me a check from something he had sold or something, but I am not positive about it.

Mr. Ryan: That is all.

Mr. Jaureguy: I think I will ask a couple of questions, if I may.

Cross-Examination

By Mr. Jaureguy:

Q. You told about a telephone call, that the operator said it was Mr. Winans and that he wanted your husband, and you called your husband. Would you have any way of knowing whether that was from a private telephone or whether or not it was from some kind of a public phone?

A. It was from a pay phone.

(Testimony of Lois Parker.)

Q. How could you tell that?

A. Because we knew it was. You could hear the money drop in.

Q. Just one other question, and that is: Prior to the time [523] you closed this deal, did your husband tell you anything about any argument he had had with Mr. Winans? A. Yes.

Q. Just tell us about that briefly, please.

A. Well, it was——

Mr. Krause: Pardon me, but might we find just how that would be admissible here, some argument that her husband told her about not in the presence of Mr. Winans?

Mr. Jaureguy: I will withdraw it and ask a different question, and then he will get the relevancy of it, I think, and we will save the argument.

Q. You left Mr. Parker's office, Vawter Parker's office, before Mr. Winans came in? A. Yes.

Q. Was there any reason for that besides preferring the courthouse to wait in?

A. (No answer.)

The Court: Well, answer the question.

Q. (By Mr. Jaureguy): Yes, I say, was there any reason? A. Yes.

Q. Just explain what that is. I don't want to upset you, Mrs. Parker.

A. Well, my husband said that he had had such a bad argument with Mr. Winans. I was angry anyway because he didn't come on time, and

(Testimony of Lois Parker.)

so I left so as not to argue with him. I did [524] not wish to quarrel with Mr. Winans about it.

Q. That is, you were a little bit aggravated because he had not shown up when he said he would, and then with that on top of the argument that your husband told you about, you just didn't want to appear?

A. Well, yes, and in the option it does not say a word about him wanting all those reservations he finally put in the deed, and my husband argued with him about that, and every time we had anything to do with him he just either didn't come, or he just didn't treat us nicely.

Mr. Jaureguy: That is all.

Mr. Krause: Your Honor, I think I will move to strike that entire answer because, obviously, all of what her husband told her—now, I will concede that he had a quarrel with Winans, and perhaps that that might be, would have been proper, but what quarrels she had and the trouble they had, and so on, I move to strike all that.

The Court: Yes, all except that they did have a quarrel.

Mr. Jaureguy: I would like to save an exception to that.

The Court: What the quarrel was about?

Mr. Jaureguy: Yes, I would like to save an exception on the ground of the nature and the severity of the quarrel.

The Court: It does not make any difference to me. I have listened to the testimony.

(Testimony of Lois Parker.)

Mr. Jaureguy: Well, I know that if your Honor strikes it [525] you will not be influenced by it. That is why I take exception. That is all.

The Court: I would like to ask a question.

Q. You say that you knew that this was a call from a pay station, the one that was made by Mr. Winans to your husband when you answered the telephone, is that right? A. Yes.

Q. You could tell by the fact that you heard the money drop in the box? A. Yes.

Q. Mrs. Parker, was that a person-to-person call?

A. It was, but I said my husband was coming, and I was holding the receiver.

Q. So your husband was home that night?

A. Oh, yes; he was home, your Honor, but I had to call him to the phone, and he just didn't come when I said he was coming.

The Court: All right. That is all.

Mr. Krause: May I ask a question just on this?

The Court: Go ahead.

Cross-Examination

By Mr. Krause:

Q. In connection with this matter that you just testified to, that was your explanation for going out of Mr. Parker's office [526] immediately when Paul Winan's name was announced, is that right?

A. I didn't know his name was announced, but if it was announced that is the reason I didn't want to meet Mr. Winans there.

(Testimony of Lois Parker.)

Q. The girl came in and said, "Paul Winans is here." You immediately went out through the door into the hallway, isn't that correct?

A. I don't know. I left before Mr. Winans came; I know that for sure.

Q. Well, you left before he got into the room, anyhow? A. I was not introduced to him.

Q. No, you were not? A. That is true.

Q. You did not wait for that, did you?

A. I certainly didn't.

Mr. Krause: That is all.

The Court: Any further questions?

Redirect Examination

By Mr. Buell:

Q. Mrs. Parker, Mr. Lindsay brought up the question of your taking over a house that you had previously sold to Mr. Stegmann. Do you recall what the consideration for that transfer was? [527]

A. You mean when I bought it from the bank?

Q. Yes.

A. I think the first mortgage was thirteen hundred and some dollars.

Q. Then did you not obtain a deed to that property from Mr. and Mrs. Stegmann?

A. I think Mr. Crow got a deed from them.

Q. Didn't that deed recite that it was in consideration of \$5500?

A. I never saw the deed that we got from Stegmanns. I don't know.

Q. The sum of some \$5500 does not ring a bell

(Testimony of Lois Parker.)

at all in connection with the deed from the Stegmans to yourselves on that house?

A. I never saw the deed at all.

Q. My question was whether or not the figure of \$5500 to you is in any way associated with the transfer of the Stegmann house from the Stegmann name to the name of yourself and your husband?

A. If there was any connection, it had to do with the cost that we had on the house, and I may have told him how much we had in it with the mortgage and all.

Q. It is a fact, isn't it, Mrs. Parker, that when that house was taken back you gave Mr. Stegmann full credit for the balance of the \$3500 second mortgage that you held on the house, didn't [528] you?

A. I didn't give him credit for anything, Mr. Buell. We didn't get our money out of the house.

Mr. Buell: I have no further questions.

Mr. Jaureguy: No more questions.

Recross-Examination

By Mr. Ryan:

Q. Just with reference to this mortgage, as I understand this, and you can correct me, there was a \$3500 second mortgage which has been previously mentioned here in the testimony regarding the indebtedness arising out of a load of logs that was assumed by Mr. Parker. Then you assumed the first mortgage held by The First National Bank of McMinnville. is that correct?

(Testimony of Lois Parker.)

A. That is true.

Q. And those combined sums amounted to a satisfaction which you took for the house which is now yours, is that correct?

A. That is for the amount of money, yes, and we had to spend more money on the house than that.

Mr. Ryan: That is all.

Mr. Strayer: Your Honor, I understand Mr. Parker has had an opportunity to examine the file and is ready to testify.

The Court: Mr. Parker, you resume the stand.

(Witness excused.) [529]

CHET L. PARKER

was thereupon recalled as a witness in behalf of the Plaintiff and Third-Party Plaintiff and, having been first duly sworn, was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Strayer:

Q. Mr. Parker, the file that you have is the file of the insurance adjuster with relation to an accident occurring on May 25, 1950, in which a truck and a tractor aboard the truck and trailer on the truck were damaged or destroyed, is it not?

A. Yes, it appears to be.

Q. Having looked through the file, do you remember the occurrence, and can you tell us the details?

(Testimony of Chet L. Parker.)

A. Well, it is not very vivid in my memory, but it seems like they—well, to start in, this instrument is in error. I noticed that a little bit in describing where it is at. I think that is where we were confused, both of us, the other day.

Q. In the first place, I take it this is not the incident that you described where your son had paid salvage on a wrecked truck or wrecked cab?

A. No.

Q. All right. Go ahead and tell us about this one.

A. This one happened, I believe, on or near Clarence Creek which flows into the Nestucca River, and Mr. Stegmann, concerning some logging up on the hill—— [530]

Mr. Ryan: Just this point: Could we have this identified by date? That is, what you are talking about?

Mr. Strayer: May 25th.

The Witness: And the truck and the Cat was lost down in the canyon that I held a second mortgage on. I believe I held a second mortgage on it. It says here I did, so I suppose I did.

Q. (By Mr. Strayer): What on, the truck or the tractor?

A. Well, I don't remember either one, but I presume I did.

Q. Who held the first mortgage on it?

A. Well, it says Otto Heider did.

Mr. Jaureguy: If you will pardon me, I think you will agree with me that we do not have to

(Testimony of Chet L. Parker.)

question your witness as to what it says in a document, and if that is all he is going to answer, I think we are just wasting our time.

Mr. Strayer: Yes, I agree, I can only ask him what he recalls.

The Court: Are you offering the document?

Mr. Jaureguy: It is in evidence, I think.

Mr. Strayer: I would be glad to put it in.

The Court: Let us offer it in evidence.

Mr. Jaureguy: I am not going to agree to have this come in because it is purely hearsay, and the witness has already said that one of the documents is in error. It is the insurance agent's report. [531]

The Court: Let me take a look at it. Go ahead, Mr. Strayer. Interrogate him all you want.

Q. (By Mr. Strayer): Mr. Parker, you made a settlement of that loss with the insurance company, did you not, for \$8,000, which was paid you and to Mr. Stegmann, and you taking an assignment of Mr. Heider's interest, isn't that correct?

A. Well, I don't remember all of that, but I suppose I did.

Q. You do not remember anything about it?

A. Well, no, I am sorry. I don't understand Mr. Heider's assignment of his interest. I don't understand what you mean even on that.

Q. Did you also buy the salvage on the wrecked Caterpillar and on the wrecked truck or either of them?

A. I might have. I would—I put considerable amounts in that kind of stuff, and I might have.

(Testimony of Chet L. Parker.)

Q. Didn't you notice in that file there that there was a bid signed by yourself bidding \$1500 for the salvage on that tractor?

A. Well, I noticed I signed something there, but I didn't pay any attention to what it was.

Q. I think if you want to look at it again you will find out that is what it was. Now, don't you recall also on this same transaction that you also had some kind of interest in the truck which Mr. Stegmann was driving?

A. I don't recall it, but it says in there that I did, but [532] I am not sure.

Q. You don't recall that you also collected a loss on the wrecked truck?

A. Let's get straight here. Did I collect a loss in my name or in Mr. Stegmann's name, or who am I supposed to collect a loss on?

Q. I am just asking what you remember.

A. I don't remember much about it.

Q. You don't remember anything about collecting a loss, or do you?

A. You are talking about the truck now?

Q. Well, I am now, yes, about the truck and trailer. A. No.

Q. Let me ask you if this isn't a fact: Didn't you own either a part-interest in the truck and trailer or else a mortgage on it, I don't know which?

A. Well, I don't know either which, but I think I owned some part of it, yes.

(Testimony of Chet L. Parker.)

Q. And didn't you buy the salvage, and didn't you hire Mr. Stegmann to bring the salvage into Portland?

A. I remember taking it out of the canyon; I remember that. The reason I remember that is that the adjuster—say, yes, I do remember something about that—the adjuster stood on the bank. Instead of being 300 feet, I think it is 550 feet. He said, "Well, we won't go clear down that bank. We will [533] just get at how many pieces it is in." I remember that. Then after I bought it, it was in a little bit different than that. Instead of being in three or four pieces, it was in several thousand pieces, and some of them are there yet. I remember that, and that also had to do with the other piece of equipment over in the Trask River that I took out that belonged to another party.

Q. We are not concerned with the others, Mr. Parker; we are talking about this particular one.

Now, does it come back to you, then, that you did buy the salvage on the truck and tractor and Caterpillar?

A. I remember buying the salvage on the Cat, or I had it anyhow. I took it out of the canyon. I remember that.

Mr. Strayer: I think that is all.

Mr. Jaureguy: I withdraw my objection to that document. I did not think it made any difference whether the statement by the insurance adjuster is correct or not.

The Court: Does anyone else object?

(Testimony of Chet L. Parker.)

Mr. Ryan: I have no objection.

The Court: All right. It may be admitted then.

(File consisting of a group of 14 sheets of correspondence was thereupon marked Plaintiff's Exhibit 77 for Identification and received in evidence.) [534]

Cross-Examination

By Mr. Ryan:

Q. With regard to this Caterpillar tractor and truck which went down in the canyon at this time when Mr. Stegmann was driving the truck, you say you had some interest in that, in the truck and the Cat, as near as you can recall?

A. When we refer to Caterpillar, are we referring to the name, brand of crawler tractor Caterpillar, or are we referring to a crawler-type tractor? This happens to be, as I remember, an HD-14.

Q. Let us reduce the thing. There are two vehicles named here that have been the subject of questioning of Mr. Strayer. Now, there is an interest of Mr. Heider in this. Do you know what it was? A. No.

Q. Do you know whether, if you had an interest in these two vehicles prior to your buying the salvage, whether you acquired that interest from Mr. Heider or from Mr. Stegmann?

A. I just don't know which. I think it was from Mr. Stegmann, but I don't know.

(Testimony of Chet L. Parker.)

Q. You don't know what the nature of Mr. Heider's interest in this was?

A. I suppose it was a mortgage. I don't think he owned part of it otherwise—I guess he owned part of it if he had a mortgage on it. [535]

Mr. Ryan: That is all.

The Court: All right. That is all, Mr. Parker.

(Witness excused.)

The Court: We will take a five-minute recess.

(Afternoon recess taken.)

(Check dated August 26, 1951, \$143, was thereupon marked Defendant's Exhibit 328-A for Identification.)

(Check dated August 18, 1951, \$90, was thereupon marked Defendant's Exhibit 328-B for Identification.)

(Check, was thereupon marked Defendant's Exhibit 328-C for Identification.) [536]

WALTER STEGMANN

was thereupon produced as a witness in behalf of the plaintiff and third-party plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Stegmann, it is true, is it not, that the neighborhood of what you call the Gopher Valley

(Testimony of Walter Stegmann.)

transaction was the first sizeable logging operation that you engaged in for yourself?

A. Well, I would say it was fairly sizeable.

Q. That was the first big one, I mean, that you really undertook on your own behalf?

A. I believe it may have been.

Q. I gather from what Mr. Ryan said the other day that you had a little bad luck on that transaction; you had a fire? A. Yes.

Q. That resulted in the loss of some of your timber, did it?

A. Quite a bit of loss of timber.

Q. That transaction started out, I believe, with an agreement which you had with Mr. Arthur dated the 1st of September, 1949, which has been identified here as Exhibit 31; am I correct in that, Mr. Stegmann? (Presenting [537] document to the witness.)

A. Well, I would say it looks like—this is a copy, all right, or his——

Q. That is the copy that you were turned over to your attorney; is it not, Mr. Stegmann?

A. No, I don't believe so.

Mr. Strayer: Can we stipulate that that is the one we received?

Mr. Ryan: I assume it is. I have not seen it here, but I am sure it is.

Q. (By Mr. Strayer): All right now, Mr. Stegmann, is it not also a fact that about the time and in the performance of your contract you incurred

(Testimony of Walter Stegmann.)

some pretty heavy financial obligations for the purchase of equipment?

A. What was that again? I didn't—

Q. You bought a lot of logging equipment in order to perform that contract; did you not?

A. Well, I had purchased quite a little bit of equipment, yes.

Q. As a matter of fact, you incurred indebtedness of thirty or forty or fifty thousand dollars, didn't you, in buying that equipment?

A. Well, I just don't remember the exact amount.

Q. Yes, I know you do not, but it was a lot of money, was it not? [538]

A. It was a fair amount of money.

Q. Is it not also a fact, Mr. Stegmann, that you got into financial troubles on that Gopher Valley job from which you have never entirely recovered?

A. Well, I don't know just what you mean there.

Q. I mean that some of the bills on that job still have not been paid; isn't that true?

A. Well, I thought they were practically all paid.

Q. What do you mean by "practically all"?

A. Well, I thought they were all paid.

Q. You knew as a matter of fact, that a Mr. Brown down there that you had as a logger had a claim against you; did you not?

A. Well, I do not, I don't remember that.

Q. You knew, did you not, that Mrs. Arthur

(Testimony of Walter Stegmann.)

had a claim against you for money that she claimed was still due on the timber?

A. Well, they—there seemed to be some discussion about whether I did or didn't owe some money on some timber, but I am sure it was paid.

Q. Wasn't there a claim against you by the Willamina Garage, or Mr. Ellis of the Willamina Garage, of some \$4000 for gas and oil, repairs to the equipment that has never been paid?

A. Was it on this Gopher Valley job, do you mean? [539]

Q. On the Gopher Valley job, yes.

A. Well, I don't know as it was on the Gopher Valley job.

Q. What?

A. I say, I do not know as it was on the Gopher Valley job.

Q. Whatever job it was, didn't you have a claim that has never been paid in about that amount?

A. Well, no, I am not sure that it was not paid.

Q. As a matter of fact, you got sued, didn't you, on the bills arising out of the Gopher Valley job involving the claims by Mrs. Arthur, Mr. Ellis, and Mr. Brown?

A. I don't know as I ever got by Mr. Ellis, or I don't remember on Mr. Brown.

Q. Mrs. Arthur sued you?

A. I think Mrs. Arthur or Mr. Arthur was trying to make me pay for some logs that I thought I had paid him for.

Q. That was a dispute, in other words. Were

(Testimony of Walter Stegmann.)

you not also sued by the State of Oregon, the Labor Commissioner, on behalf of your employees on the Gopher Valley job? A. Not that I know of.

Q. You do not remember about that? You have been under the impression all these years that all of your employees have been paid on the Gopher Valley job? A. Yes. [540]

Q. You did come out of the Gopher Valley job indebted to Mr. Parker on a loan of some \$6000 that he made to you during the job; did you not?

A. What was that again?

Q. You came out of the Gopher Valley job owing Mr. Parker on a loan of around \$6000?

A. Well, I did borrow \$6000 from Mr. Parker to gravel a road into this Gopher Valley timber. It was on—and some falling and bucking that was done on the Gopher Valley job.

Q. Is it not a fact, Mr. Stegmann, that ever since the Gopher Valley job you have been indebted to Mr. Parker in varying amounts, in some amounts?

A. Well, no, I don't think so. There is times that I had not owed him any money, I thought.

Q. When do you recall that you were completely out of debt to Mr. Parker?

A. Well, it seemed like after the, during 1950, that I was out of debt with Mr. Parker.

Q. What time in 1950?

A. Well, that was right around the fore part of 1950.

Q. Do you recall this truck accident that hap-

(Testimony of Walter Stegmann.)

pened on May 25, 1950, that Mr. Parker just described? Do you remember that incident when you were driving the truck and trailer with a tractor on board and the main line drive broke, as I understand it, and the truck went over a [541] cliff with the truck driver aboard? Do you remember that incident?

A. Yes, I remember I was driving the truck and hauling the tractor.

Q. Do you also recall that you owned the truck and trailer and the tractor and that Mr. Parker had a mortgage on each of them?

A. I don't know as I did at that time. I mean, I understood that Otto Heider was holding a mortgage on the paper at that time.

Q. Didn't Mr. Parker have a second mortgage?

A. Well, it is possible.

Q. Did you look over that insurance adjustor's file this morning or early this afternoon, the same one that Mr. Parker had?

A. I believe it was.

Q. Pardon? A. I think it was.

Q. You looked the file over, I say?

A. I looked at some of it, yes.

Q. Didn't you refresh your memory that when a settlement was made on the insurance that it was paid to you and Mr. Parker?

A. Well, I think I noticed on the letter there that it said it was, as I remember—I don't remember very [542] clearly—that it was to Mr. Parker,

(Testimony of Walter Stegmann.)

I thought, and I was thinking that—or Mr. Heider and myself, and, therefore, I had an interest in it for they wanted my name on there. I am not sure.

Q. You were logging at that time where? I assume that this occurred in connection with some logging operation you were conducting.

A. What time did you say that was now?

Q. May 25, 1950.

A. I was logging some in Gopher Valley.

Q. I am sorry, I didn't hear you.

A. I was logging some in Gopher Valley.

Q. You were through, then, in Gopher Valley, were you not, Mr. Stegmann? A. In May?

Q. Yes, Mr. Rutherford had taken his contract on March 23, 1950, and you did not log at Gopher Valley after that, did you not?

A. I am sorry. I have the dates mixed up there.

Q. Yes?

A. It was so close that I couldn't quite remember. It was so long ago.

Q. What is your recollection as to where you were logging at that time?

A. I may have been going up to do some road-building and [543] logging out some right-of-ways up some scattered stuff that Willamina Lumber had up on, I can't think of the name.

Q. Would that be up around Square Top?

A. Yes, in the vicinity.

Q. A mountain that is known as Square Top. Is that the name of a mountain in Tillamook County?

A. Well, I believe they refer to it as that.

(Testimony of Walter Stegmann.)

Q. Your recollection is that you had a logging operation there for Willamina Lumber Company?

A. Well, I don't remember exactly. It seemed like I was going up to build some roads or something there.

Q. Whose timber was that that you were logging at that time, Mr. Stegmann?

A. Well, I don't know as I was going to log only the logs that were on the right-of-way, a few scattered ones, and I was—I think from memory, I thought that it was Willamina Lumber's.

Q. I am sorry. I didn't understand the last answer. You thought it was what?

A. I thought it was Willamina Lumber Company's timber.

Q. They were the ones that were paying you, at any rate?

A. That was the ones I intended to take this salvage off for and build the roads.

Q. I notice, according to Mr. Parker's bank documents, [544] that on April 27, 1950, you sold him an arch and borrowed \$200 from him. His record indicates eighteen hundred dollars for the sale of the arch plus \$200 loan. Do you recall that transaction?

A. Well, I don't really remember that.

Q. Well, now on November 20, 1950, was the date that you made your large loan, at any rate, for \$22,000, promissory note that you signed with Mr. Parker; do you recall that? A. Yes.

Q. Will you tell us how that loan arose, the con-

(Testimony of Walter Stegmann.)

versation leading up to it, and just what you agreed to?

A. I don't remember exactly. It is quite some time ago, but it seems like I was out at the, this Gopher Valley operation. I had seen where they had bought the timber cheap, were getting a big price for it and selling it, and other timber brokers I knew of that had told me about buying and selling some timber, and I planned on buying and selling some timber.

Q. You wanted \$22,000 then to finance the buying and sale of the timber?

A. Well, that is what I was thinking. I thought it was \$20,000, but I see now it is twenty-two on the note.

Q. Do you remember your discussions with Mr. or Mrs. Parker regarding that loan? Did you propose that they loan you twenty-two thousand? [545]

A. I remember asking if I could borrow that much money, if I remember.

Q. Did they agree to loan it to you?

A. They did.

Q. What was your understanding as to what their compensation was to be?

A. Well, I was borrowing it as cheap as I could, and, as I remember there was so much interest on it I was to pay them back.

Q. Four per cent interest?

A. I believe it was.

Q. Did you tell them that you had any particu-

(Testimony of Walter Stegmann.)

lar tracts of timber in mind that you wanted to use it for?

A. Well, I may have mentioned some, but I don't know because I think that I was wondering that if I did mention if they were to go, he might possibly go and purchase it himself. He was looking for timber.

Q. Will, did you have any timber in mind specifically? A. Yes.

Q. What tract did you have in mind?

A. Let's see, what was that date now, November, wasn't it?

Q. November 20, 1950.

A. Well, I was looking at several pieces of timber at that time. I mean, there was—I believe there was one or [546] two at, out of Grand Ronde, Oregon, out towards Dolph, and then there was, I think, 160 acres there, as I remember, they wanted about \$15,000 for it. I was looking at it at that time.

Q. Did you figure that you needed a year to swing those deals and pay the money back?

A. Well, it was possible that I might want to buy a piece of timber and log it out. If it was such that the profit would be greater logging, why, I would do it that way.

Q. All right, let us get down, then, to the day that you got the money. Was it on the same day the note was signed?

A. Well, I am sure it was.

Q. How was it paid to you, Mr. Stegmann?

(Testimony of Walter Stegmann.)

A. Well, as I remember, a lot of people I was talking to would rather have cash, and I got cash money.

Q. You got \$22,000 in currency? A. Yes.

Q. Did you have a bank account at that time?

A. I don't know as I did or not. I don't remember exactly. I don't think so.

Q. How long had it been since you had had a bank account?

A. Oh, it must have been just a little while before. I am not sure.

Q. Where did you have your bank account the last time you [547] had one?

A. I think it was in Sheridan Oregon.

Q. Is there only one bank there?

A. Yes, that I know of.

Q. Have you had a bank account since that time? A. No.

Q. All right, now, this \$22,000 in cash, what did you do with it, Mr. Stegmann?

A. Well, there were—I was looking for some timber, and I spent looking at these two pieces of timber I did not buy and several other ones I did not buy, I spent quite a bit of it looking around for other timber.

Q. What do you mean, on living expenses, travel?

A. Living expenses and traveling expenses.

Q. Did you spend it all on living and travel expenses? A. No.

Q. What else did you spend it on?

A. Well, it seems like I had—I bought some timber up on Pea Vine.

(Testimony of Walter Stegmann.)

Q. Who did you buy that from?

A. I think it was a man by the name of Stalter, I believe his name was.

Q. When was that purchased? When was that purchase made?

A. I think it was in the first part of 1950, I believe. I am not sure. [548]

Q. 1950. You borrowed the money in November, 1950?

A. Well, now, I am sorry, I had the dates confused. It would have been in fall of 1950 or 1951.

Q. It was probably early in 1951, you think?

A. It must have been right at about the first of the year, as I remember, but I am not positive. It seemed like—it was in the winter time.

Q. How much did you pay him for that timber?

A. I believe I gave him \$3,000.

Q. In cash? A. It was cash money.

Q. Did you take a receipt for that?

A. I don't know as I took a receipt for it, or I believe I did. I am not sure.

Q. What did you do with the receipt?

A. Well, I have had considerable trouble locating my receipts. I have moved quite a bit, and I have some things stored, and several of those packages where I have had receipts and papers in are—I have been unable to find and identify them.

Q. This is one of the receipts you have never found then? A. I haven't run across it, no.

Q. Did you have a written contract on that Pea Vine timber?

(Testimony of Walter Stegmann.)

A. No, I think he give me a deed to it. I did get the [549] land and all.

Q. Did you record that deed?

A. Well, I believe it was.

Q. In what county?

A. Oh, it was in Yamhill County is where it was recorded.

Q. How long did you hold that timber land before you sold it?

A. Well, I think I sold the timber very shortly after I purchased it, I think, probably within a few months. I am not sure. I can't remember exactly the exact date.

Q. To whom did you sell the timber?

A. I cannot think of his name. It was a man from Washington. I believe it was a man by the name of Mann. I am not sure. It seemed like he purchased the timber.

Q. His name was what? A. Mann.

Q. Do you know his first name?

A. No, I can't remember his first name.

Q. How did he pay you, in cash or by check?

A. Well, I believe it was by check. I can't remember though.

Q. How much money did you get for it?

A. Well, I sold it for \$3,000, as I remember.

Q. The same amount you paid for it?

A. Yes. [550]

Q. So you made no profit on that deal?

A. Well, I had the land in a small cleared area up there that was level.

(Testimony of Walter Stegmann.)

Q. Do you still have that land? A. Yes.

Q. And your understanding is that it is recorded in your name down in Yamhill County?

A. Well, I think it was put in my wife's name, I mean, as it was recorded. I was thinking about—we was maybe having a—it had an orchard up there and——

Q. It had a what?

A. It had an orchard on it and a cleared area, and we were planning on putting some garden in there.

Q. The title then is in your wife? A. Yes.

Mr. Ryan: Excuse me, Mr. Strayer. You assigned that deed to me, however, didn't you, Mr. Stegmann?

The Witness: Well, now, that's right; I recollect I did. I did assign that deed to Mr. Ryan for his helping out on his services.

Q. (By Mr. Strayer): Is it still worth \$3,000?

A. I don't think the ground is worth \$3,000.

Q. It has been logged, I assume, hasn't it? It has been logged since you sold it?

A. Yes, some of it has been taken off, I [551] think.

Q. What else did you spend this \$22,000 on?

A. Well, I had to build some road up there on some of that.

Q. You what?

A. There was some road building to do on it, and put the fire trails out, and I still had to build

(Testimony of Walter Stegmann.)

some fire trails on some land I had logged off of the farm of my father, or the family farm, and there was still some fire trails to be cleared up there, and I had paid a considerable amount for that work being done to clear those out.

Q. How much did you spend for road building and fire trails?

A. I don't remember exactly. It seemed like it was right around \$11,000 on that.

Q. I think in your deposition you gave the figure of \$11,325. Does that sound right?

A. I believe that is right. I think it was taken off from that.

Q. To whom did you pay that money?

A. Well, that was paid to John D. Bailey. Now, I don't know exactly whether he was from Eugene or Roseburg.

Q. How did you get in touch with John D. Bailey?

A. It seems like he was up in that country doing some work, a little gyppo logging and all, and he was in that [552] neighborhood, and I had him do it.

Q. Have you ever seen him since?

A. I have not.

Q. Any idea where he is? A. No.

Q. Have you made an effort to find him?

A. Well, no, I haven't.

Q. All you know about him is that it is a John D. Bailey who comes from somewhere around Eugene or Roseburg; is that right?

A. That's right.

(Testimony of Walter Stegmann.)

Q. You paid that money in cash? A. Yes.

Q. Taking a receipt for it?

A. I am sure I got a receipt for it.

Q. Can you find your receipt?

A. I could not find it.

Q. How long did he work on these roads and fire trails?

A. Well, I don't remember exactly. He was—part of the time he did it, it seemed like, when he was not busy or in the winter time and off and on. I don't know just how much time he did spend on it, but that was what he was charging me for.

Q. He did this work early in 1950, did he, the early portion of 1950-1951, I should say, pardon me? [553]

A. Yes, did some in 1951 and some was done in the fall of '50, I am sure; probably that is when it was.

Q. Where was that, on your parent's place?

A. Some of it was, that's right.

Q. That property belongs to your father and mother, does it? A. Yes.

Q. How much of that \$11,325 was spent on your father and mother's place?

A. Well, now, I couldn't just exactly say how much was spent there.

Q. About what proportion of it was spent there? How much on the Pea Vine tract?

A. I don't know just how many hours he worked on either one. I couldn't—

Q. You have no breakdown on that at all?

(Testimony of Walter Stegmann.)

A. No.

Q. What else did you spend the \$22,000 on?

A. I bought a car; we did, for the family, and I paid a considerable amount down on it.

Q. What is that?

A. I paid down on a car, a new car.

Q. Was that a Mercury?

A. I believe it was.

Q. 1951 Mercury which you bought where? [554]

A. I think it was bought at Lyman-Slack Motors.

Q. You just made a down payment on that? You didn't pay cash for it?

A. No, we didn't pay it down completely, as I remember.

Q. How much of a down payment did you make?

A. I don't know the exact amount on it. I couldn't remember.

Q. Do you still have that car? A. No.

Q. When did you sell it?

A. I think I sold it in 1951. I am not sure.

Q. Well, late in '51 or early?

A. I believe it was late in '51.

Q. You still had it at the time of this Winans transaction; did you not?

A. Yes, I am sure I did.

Q. Did you register that car in your name or in your wife's name?

A. No, that was registered in my wife's name, I believe.

(Testimony of Walter Stegmann.)

Q. Was there any particular reason for doing that that way?

A. Well, not that I really know of, only that I did have a Buick car of my own, and I had a pickup.

Q. Registered in your own name?

A. The Buick was registered in my name. [555]

Q. How about the pickup?

A. Well, I don't remember whether it was registered in my name. It was a pickup that we had on the farm, and I don't remember whether it was registered in my name or in my father's name.

Q. Did your Buick have a mortgage on it?

A. I think it was not paid off completely, I don't believe.

Q. You still have the Buick? A. No.

Q. Now, both of those cars were registered in Oregon, were they? A. I believe they were.

Q. One in your name and one in the name of your wife? A. Yes.

Q. Well now, how else did you spend any part of that \$22,000?

A. Well, I don't remember exactly. We spent a considerable amount for living and traveling expenses were pretty heavy.

Q. Well, down until the time of the Winans' transaction in August of 1951 had you made any timber deals that resulted in a profit to you?

A. What time was this now?

Q. Any time down until August of 1951?

A. You mean from—— [556]

(Testimony of Walter Stegmann.)

Q. From November 20, 1950, to August, 1951?

A. Yes, I believe, I know I bought a piece from Mrs. Johnson in Newberg. It was within a very short time after I bought it that I sold it again, and I had—let's see, I think I located another piece there. I believe I got a finder's fee from Mrs. Parker. That was around Newberg there. It was before the Johnson piece.

Q. Let us put it this way. At the time you bought the Johnson piece did you have any money left from that \$22,000?

A. Well, I would think so. I don't remember the exact amount.

Q. About how much did you have left?

A. That would be hard to say. I mean, I couldn't make any estimate.

Q. You were keeping that money in some kind of a box at home, I understand, at your home?

A. Yes.

Q. You kept no kind of an inventory or record of what was in it?

A. No, if somebody wanted cash for timber I would take out the cash I needed, and if I sold some timber and I got cash money I would put it back in the box, and it was——

Q. Well, as I recall, pardon me, were you [557] through? A. Yes.

Q. I didn't mean to interrupt you.

As I recall, you said in your deposition that you still had some of that \$22,000 left at the time of this Winan's transaction; am I right in that?

(Testimony of Walter Stegmann.)

A. Maybe it is possible, but I don't know whether it was the \$22,000 or whether it was some, I mean, from the other deals I had made.

Q. Do you recall the Wrist deal, the Wrist timber? You had a verbal option on it, didn't you, Mr. Stegmann? A. Yes, I think it was.

Q. From Mr. Wrist up for what, \$3000?

A. Yes.

Q. Where was that timber located, out around McMinnville somewhere?

A. Well, that was between McMinnville and Newberg or the other side of Newberg.

Q. You told Mr. and Mrs. Parker about that Wrist timber; is that what you did?

A. I think I told Mrs. Parker about the Wrist timber.

Q. She took over your verbal option; is that what the deal was?

A. Yes, she paid me so much for the work I had locating it and took over my verbal option to purchase the timber.

Q. How much did she pay you on it? [558]

A. I don't remember exactly. It seemed like it might have been \$100 to \$150.

Q. At the time of your deposition, as I recall, you first said you thought it was less than a thousand dollars, and then a little later on you said \$150; is that your recollection?

A. I believe it was.

Q. The record here shows here, I believe, that the Wrist timber was purchased by Mr. Parker on

(Testimony of Walter Stegmann.)

April 19th, 1951, for \$3000. Now, why didn't you buy that timber yourself, Mr. Stegmann?

A. Well, for one reason, mainly I guess was because that I just wasn't sure whether if I did buy it that I could sell it for \$3000. I thought it was possible that it might, but I didn't want to take the chance on it.

Q. Was it easier for the Parkers to sell timber than it was you?

A. No, it wasn't that I know of. I mean——

Q. Well now, the record also shows that on April 20, 1951, one day after they bought the Wrist timber, Mrs. Parker loaned you \$1500; is that right?

A. Well, I don't remember that. I mean it is just hard for me to remember that.

Q. Don't you remember—Exhibit 35, will you hand that to the witness? [559]

(Document presented to witness.)

Q. Do you notice the additional line at the bottom of that agreement, acknowledging a loan of \$1500?

A. Well, yes, I noticed this here on the bottom of that?

Q. Isn't that dated April 20, 1951?

A. Yes.

Q. And did you borrow \$1500 on that date from Mrs. Parker?

A. Well, it is possible, but I just can't quite remember it. It is possible that I may have borrowed some more money.

(Testimony of Walter Stegmann.)

Q. Is it possible that you didn't have any of that \$22,000 left on April 19, 1951, and that that is the reason why you did not buy the Wrist timber yourself? A. No, I don't think so.

Q. You think you still had some left, and you needed \$1500 more?

A. Well, I could use that much more, I know, maybe I thought I could.

Q. What did you have in mind using it for?

A. Well, purchasing other pieces of timber.

Q. Did you have some other particular tracts in mind?

A. I was looking at a lot of tracts of timber all over the country, and they were, a lot of them, and I just can't remember the detail of each one. [560]

Q. Well now, the record also shows, Mr. Stegmann, that on May 1, 1951, only ten days after you had borrowed that \$1500, you worked out this credit arrangement with Mr. Parker, ten thousand dollar loan whereby you were to be permitted to write checks on his account; do you remember that?

A. Yes, I remember talking about it this morning.

Q. Very shortly after you made that arrangement with Mr. Parker you will recall that you started buying timber from Mrs. Johnson, using that credit arrangement for that purpose; is that correct?

A. I remember buying a piece of timber from Mrs. Johnson, yes.

(Testimony of Walter Stegmann.)

Q. That was on May 14, 1951; was it not?

A. Yes, if that is correct, I mean.

Q. Now, my question is if you had fifteen hundred dollars that you had just borrowed from Mrs. Parker and if you had some of that \$22,000 loan left, why did you not finance that Johnson operation yourself instead of paying interest to Mrs. Parker?

A. Well, I do remember very clearly, it is possible I was looking at a lot of pieces of timber with the intention of purchasing them, and I don't know whether, but I may have had some other tracts of timber in mind.

Q. Do you remember any? [561]

A. Well, there was two or three pieces right around that immediate vicinity.

Q. What were the names of the owners?

A. I don't remember the exact names. I think one was Gus Schot or something like that I believe his name was. Well, I just can't think of the other people's names, but they were right around in that vicinity. There were several nice, small—some were small and some were fairly large pieces of timber there.

Q. Mr. Stegmann, what was your conversation with Mr. Parker in regard to this \$10,000 credit arrangement?

A. Well, I don't remember exactly what all the discussion was on it.

Q. Well, tell us what you do remember.

A. Well, it seems like I did have this, oh, I

(Testimony of Walter Stegmann.)

don't remember the amount of cash money that I did have, but it was cash money I did have, and it is possible that I needed an additional amount to purchase some of these tracts, but I didn't want to pay the interest on the money, if possible, until I did use the money, so as I remember, I heard somewhere that if I had a note that I could borrow so much money on it and then pay some other time whenever the check was made out, why, the interest would start from that day.

Q. You approached Mr. Parker with that program outlined? [562]

A. I think that might have been what it was.

Q. Pardon?

A. I think that might have been what it was.

Q. And did Mr. Parker, by any chance, ask what you had done with the \$22,000 that you had borrowed only five months or so before?

A. Well, he may have asked me. I don't remember. I was telling him I thought I would need an additional amount the way it looked. I wanted to purchase some other tracts.

Q. Were you able to point out to him where you were putting the money to good use and making a profit on it?

A. Well, I don't know as I ever—you can't point out a certain tract of timber.

Q. Well, you had not made a penny with the use of that \$22,000 at the time that you signed the \$10,000 note, had you?

(Testimony of Walter Stegmann.)

A. Well, as I remember, I had bought a piece of timber and sold it.

Q. Which piece?

A. The piece up on Pea Vine.

Q. But you made no profit on that, did you?

A. Well, I still had the land and some timber that was left on there that they did not take off.

Q. Was that land free from encumbrance?

A. Yes. [563]

Q. How much is it worth?

A. Well, I don't know. I mean, it is just hard to say. Depends on who wants it and what it might be used for.

Q. That is the only transaction where you made any money up until that time; is that right?

A. Of course, on this Wrist piece of property, why, I had made a little, yes.

Q. Which piece, pardon me?

A. The Wrist.

Q. You had made \$150 on that?

A. But I don't know whether that had any—it was a good deal, but, I mean they made some money off of it, I guess.

Q. Well now, as soon as you made that \$10,000 credit arrangement, it was very shortly after that that you bought the Johnson timber; is that right?

According to the dates on the checks I believe the first payment was on May 1, 1951, apparently the same date as the loan. Do you recall, did you pay Mrs. David on the same day that you made that ar-

(Testimony of Walter Stegmann.)

rangement with Mr. Parker? May I have those checks?

Mr. Buell: 39-A, B, C, D.

Q. (By Mr. Strayer): What is the date of the check to Mrs. David there, that \$150 check?

A. It looks like, I don't know, it looks like it could be May 10th, or it could be the 14th. I am not sure. [564]

Q. I notice here the copy of the contract—will you hand this to the witness, please—I believe this is the Exhibit attached to Mr. Stegmann's deposition. Do you have a number for that? May we have it marked 28.

(A photostat, Agreement and Timber Bill of Sale, marked plaintiff's Exhibit 28-A for identification.)

(Photostat, Agreement and Timber Bill of Sale, marked plaintiff's Exhibit 28-B for identification.)

The Court: Are you going to have Mr. Stegmann for the rest of the day?

Mr. Strayer: I cannot finish with him, I am sure.

The Court: Do you want to finish with Mr. Stegmann tomorrow?

Mr. Strayer: Oh, I think so, your Honor. I hesitate to make any more predictions, but I really think I will.

The Court: I think there are other people going to interrogate him.

(Testimony of Walter Stegmann.)

Mr. Strayer: I was thinking of my examination only. I presume there will be considerable cross-examination.

The Court: What do you want to do; is Mr. Abraham your witness?

Mr. Strayer: Yes, I would suggest Mr. Buell might talk with Mr. Abraham while I go [565] ahead.

The Court. Proceed.

Mr. Ryan. Is that Exhibit 28?

Mr. Strayer: Exhibit 28.

(Discussion off the record.)

Mr. Strayer: Let us call it 28-A and B.

Q. Now those are the contracts, are they not, relative to the Johnson transaction, Mr. Stegmann?

A. I believe so, that is, they seem familiar.

Q. They fixed the date of the transaction as about May 10, 1951; do they not?

A. Well, Mrs. Johnson's has the 14th on it.

Q. Yes, but Mrs. David was the 10th, and that was the opening part of the transaction; was it not?

A. Well, I believe so.

Q. Those all related to the purchase of the Johnson timber, both of those agreements?

A. How was that?

Q. Both of those agreements related to the purchase of the Johnson timber; did they not?

A. Well, they were adjoining each other, yes.

Q. You paid \$3000 total for the two?

A. I don't remember the exact figure, but if

(Testimony of Walter Stegmann.)

that is what they figured up, why, it would be.

Q. Your checks figure, I think the three checks figured \$2,850, and then there was an item of interest on a note, [566] one hundred fifty, attorney's fees, or a total of \$3000; is that your recollection?

Mr. Ryan: What note are you referring to?

Mr. Strayer: The ten thousand dollar note.

Mr. Ryan: What attorney's fees?

Mr. Strayer: \$150 interest, I mean. Well, no matter, the checks will speak for themselves, Mr. Stegmann. Your recollection is that they—it was in the neighborhood of the price that you paid for the timber?

A. Well, yes, it was around twenty-eight to twenty-nine hundred dollars, something like that.

Q. To whom did you sell the timber?

A. McCormick Lumber Company at Sheridan.

Q. McCormick Lumber Company, and for what price did you sell?

A. I really don't remember the exact figure, but I think it was around probably five thousand, fifty-three hundred dollars, something like that.

Q. Five thousand to fifty-three hundred dollars?

A. I think it was something like that. I don't remember exact.

Q. When was that sale made, how long after you wrote the check and bought the timber?

A. Well, I think it was fairly shortly.

Q. A matter of thirty days? [567]

A. Well, I imagine it was. It was possible.

Q. Yes, all right now, when you sold the timber

(Testimony of Walter Stegmann.)

did you pay back the amounts that had been advanced from that bank account, the \$2,850, in other words?

A. Well, I don't remember. It seems like I made a payment to them, to Mr. Parker or Mrs. Parker, toward a note.

Q. How large a payment did you make?

A. Well, I believe I give the biggest part of it that I made. I paid it to them. Whatever I received for the timber, I think that was the amount I paid to them.

Q. You mean you paid all of the proceeds of that sale over to Mr. and Mrs. Parker?

A. I believe I did.

Q. How did you receive that payment, by cash or check?

A. Well, I don't know. I believe that was by check.

Q. How did you make the payment to Mrs. Parker or Mr. Parker?

A. Well, I can't remember whether I paid them by check or by cash.

Q. It would not have been with your check, in any event, I take it. You might have endorsed the check over to the Parkers, you mean?

A. Well, it is possible, but I don't know. It wasn't my check. [568]

Q. Either you cashed a check and gave them the check, or else you endorsed over to them the check that you got from McCormick Lumber Company?

(Testimony of Walter Stegmann.)

A. Yes, I don't remember exactly.

Q. All right, the thing that I am getting at is, so that at the time of the sale of the Johnson timber, whenever that was, you applied all the proceeds of that sale to your indebtedness to the Parkers; is that right? A. Yes.

Q. So that if we can find out what that amount was we will know how much credit you were entitled to on those notes?

A. Well, whatever is on the back of the note I think is the amount I paid them. I am not sure.

Q. The amount on the back of the note is \$2,300.

Mr. Ryan: Has he the note there to refresh his memory?

Mr. Strayer: No, I do not think he has. That is Exhibit No. 36.

Q. If you look on the back there, Mr. Stegmann, I think you will find the endorsement of \$2,300; is that right? A. Yes, I see \$2,300 here.

Q. Do you notice any other credit on there?

A. Well, I see interest on here. I mean, I don't—

Q. Interest of \$150 or that is \$140, I should say. [569]

A. I think it is something like that.

Q. Well now, you received more for the Johnson property than \$2,300 plus \$140, didn't you?

A. Well, I don't remember exactly just how much I did receive for it.

Q. Did you receive more for it than you paid?

(Testimony of Walter Stegmann.)

Mr. Ryan: If the Court please, we have a copy of this contract which was never asked for at the time of the deposition.

Mr. Strayer: Which contract is that?

Mr. Ryan: Which you are asking the amount that he received.

Mr. Strayer: McCormick Lumber Company. I have never seen it.

Mr. Ryan: It was not asked for at the time of the deposition. I do not know the relevancy of it.

Mr. Strayer: \$5,300 appears to be the correct amount. May we have this marked.

(Document, Agreement and Timber Bill of Sale, marked Plaintiff's Exhibit No. 29 for identification.)

Mr. Strayer: May it be stipulated that that is a contract for the sale of the Johnson and David timber.

Q. Refresh your memory if you like, Mr. Stegmann. It is correct, is it not, that \$5,300 was the sales price of the timber? [570]

A. Yes, that is what is written here.

Q. All right now, was the whole \$5,300 paid to the Parkers when you received it from the McCormick Lumber Company?

A. I am not sure. I believe it might have been. That is, I mean I am not positive.

Q. Did you receive that all at one time or in installments?

A. This was, I think, all at one time.

(Testimony of Walter Stegmann.)

The Court: I do not recall how much was paid for the property originally by Mr. Stegmann.

Mr. Strayer: I am sorry, I didn't hear your statement.

The Court: How much did he pay for that?

Mr. Strayer: According to the checks, he paid \$2,850 for the property, and the endorsement on the note indicates in addition to that \$150 interest.

The Court: Who paid for the property that was sold to McCormick Lumber Company?

Mr. Strayer: Mr. Stegmann paid them by checks written and debited against Mr. Parker's bank account.

The Court: For how much?

Mr. Strayer: \$2,850. That amount is endorsed on the back of the \$10,000 note. Then there is added to that \$150 interest, or a total of \$3,000.

The Court: \$5,300 was the sales price of the timber? [571]

Mr. Strayer: Yes.

Q. (By Mr. Strayer): If I can go back for just a moment, Mr. Stegmann, to the \$23,000 note in November, 1950, you mortgaged certain property to Mr. Parker. Where was that property located at that time?

A. Well, I don't remember exactly. It seems like I had some stuff up in the Tillamook country, some logging equipment, and it seems like there might have been some still at Gopher Valley. I am not sure.

Q. You mortgaged, as I recall, you mortgaged,

(Testimony of Walter Stegmann.)

was it a Willamette yarder, yes, a Willamette yarder, and an Austin-Western road grader together with certain tackle, I gather from the mortgage. Do you remember where the yarder was and where that road grader was?

A. Well, I am not—gee, that has been so long ago I am not positive just exactly where it was, but that is where I thought it was.

Q. Was it in your possession? A. Yes.

Q. And being used on one of your logging jobs?

A. Well, I did sometimes rent them out, some equipment, so I am not positive whether—I mean, I may have been using it at that time or may not have been using it at that time.

Q. What was the value of that equipment at that time? [572]

A. Well, I don't know. It entirely depends on the man that was going to use it. I mean, as for me, I thought it was around twenty to twenty-five thousand dollars.

Q. What was the value of the yarder?

A. Well, I would say it was probably well over \$20,000.

Q. And the grader?

A. It would run, oh, three or four thousand dollars, I imagine, if you had——

Q. How long had you had that equipment?

A. Well, some of it had been quite a little while. I mean, I don't remember exactly when I acquired it.

Q. How much did you pay for it?

(Testimony of Walter Stegmann.)

A. That I don't remember.

Q. Whom did you buy it from?

A. Some of it I had bought from the Willamina Lumber Company equipment; some of it I bought from other loggers. I just wouldn't remember just which, just where I did get it from.

Q. How many similar pieces of equipment like that did you have? Now let us take first yarders. How many Willamette yarders did you have?

A. I had even built up one of them, I mean, so I don't remember which one it was. It seemed like I may have built this one. I don't remember.

Q. Was this, by any chance, a yarder that you bought [573] from Mr. Payne?

A. No, I don't believe so, no.

Q. You have no idea where you bought it or how much you paid for it?

A. Well, I bought quite a few, I mean not quite a few but several of them, and there was several of them I had bought and converted. What I mean is, they were large machines and had been converted, and put motors on them.

Q. What did you do with the equipment? Where is it now?

A. Well, as I remember this particular one, it seemd there was one that a tree had fell on and ruined the motor of it. I believe it was this one.

Q. On the yarder, you mean?

A. Yes, on the yarder.

Q. Did you have insurance on it?

A. No, I didn't have any insurance on that.

(Testimony of Walter Stegmann.)

Q. Was it worth anything after that?

A. It seemed like it wasn't worth too much because it seemed like I sold the elevator and took some of the rig that wasn't worth as much as it would have been altogether.

Q. How much did you get for it?

A. Well, I couldn't say exactly.

Q. What happened to the grader?

A. Well, I still have the grader. [574]

Q. Where do you have that located?

A. I don't know just exactly where it is located. I have loaned it to my brother.

Q. Didn't you say in your deposition, Mr. Stegmann, that you had sold all of your equipment and had nothing left but a power saw?

A. I thought I had sold it all, but, as I remember, it seemed like I hadn't sold this piece, I don't believe.

Q. That grader is now down with your brother, you say?

A. I don't know just exactly where it is at, but I think it is.

Q. How long has it been since you have seen it?

A. Well, it has probably been right close to a year.

Q. Couple years? A. A year, I imagine.

Q. A year?

A. Maybe not. I don't remember exactly.

Q. Now, on the \$10,000 note you mortgaged two

(Testimony of Walter Stegmann.)

Carco towing winches and one dozer blade. Now where were those located when the mortgage was given?

A. I can't remember exactly because I had stuff at several places, and I don't remember which particular piece was where.

Q. How much had you paid for that equipment?

A. Well, I couldn't tell you exactly how much I had paid [575] for it. Some of it had been taken off of other equipment.

Q. Do you know who that you had bought it from?

A. Well, I don't remember that either.

Q. Where is today?

A. Well, I have sold some drums and I think a dozer blade or so, yes.

Q. What? A. Yes, it was sold.

Q. To whom did you sell it, and how much did you pay for it?

A. I don't know exactly how much it was that I did receive for it, I mean, just offhand.

Q. Who bought it?

A. It seems like there were—there was a fellow from southern Oregon come up and got one of the drums. I don't remember.

Q. Do you know who that was?

A. I don't even remember his name.

Q. Who bought the rest of it?

A. Well then, there was another logger, I believe he bought a drum and a blade together, but I am not sure.

(Testimony of Walter Stegmann.)

Q. Do you know who that was?

A. I can't remember his name.

Q. That is all gone now? A. Yes. [576]

Q. You cannot give us the name of anyone who bought it or how much you paid for it?

A. I can't remember offhand, no. I think I would have had, as I remember, some slips of paper on that, but I can't locate those.

Q. Did you pay any personal property taxes on that equipment?

A. Well, I don't know whether there was or not. I just don't remember that.

Q. Did you ever list it for assessment with the County Assessor?

A. Well, I think he just come around and looked to see what you had or, as I remember, I don't know.

Q. But you never filed any list with the County Assessor listing this particular equipment?

A. Not that I remember.

The Court: Were there two mortgages, one for ten thousand and one for twenty-two thousand?

Mr. Strayer: That is right, your Honor.

The Court: To whom is the ten thousand dollar mortgage payable?

Mr. Strayer: To Mr. Parker.

The Court: Was that recorded, that ten thousand dollar mortgage?

Mr. Strayer: No, it was not. [577]

Mr. Krause: Neither one.

(Testimony of Walter Stegmann.)

Mr. Strayer: Neither one was recorded, neither the \$22,000 mortgage nor the \$10,000 mortgage.

The Court: Was the \$10,000 mortgage given to secure advances?

Mr. Strayer: Yes.

Q. (By Mr. Strayer): Now, did you ever list this equipment on the depreciation schedule in your income tax return, Mr. Stegmann?

A. Well, I don't remember. Some of it was old equipment and had been depreciated out, and I think some of it was. I don't remember how the tax man figured it out.

Q. Well now, can you give us any idea of how much money you owed on November 20, 1950, when you negotiated this loan from Mr. Parker? Do you have any idea what your net worth was on that date? A. No, I don't remember exactly.

Q. Do you have any idea what your net worth was from May 31, 1951—is that the date—yes, May 1, 1951, when you made this \$10,000 credit arrangement? A. I can't remember.

Q. Do you have any idea what your net worth was on August 13, 1951, when you took the option from Mr. Winans?

A. Well, I don't quite understand how you mean that. [578]

Q. You know what net worth is, don't you, Mr. Stegmann, balancing your assets on one hand and your liabilities on the other? Let us take August

(Testimony of Walter Stegmann.)

13th, for example. How much money did you owe at that time to various different people?

A. Well, I don't, right offhand I couldn't say. In other words, I don't know. I didn't think I owed very many.

Q. What did you have in the way of assets at that time? What did you own? To start out with, you had two automobiles, didn't you, one in your name, one in your wife's name? Both mortgaged, were they?

A. I think I was paying for them still on a contract.

Q. What other property did you own at that time? A. What time did you say?

Q. August 13th, 1951.

A. Well, as I remember, I still had this land. We did, still have this land at Pea Vine.

Q. At what value?

A. I don't know just what value it would be.

Q. All right, what else?

A. Well then, I had the pickup.

Q. Was that registered in your name or your father's name?

A. I just don't remember that, I don't [579] know.

Q. What is that?

A. I say, I just don't remember whether it was or not.

Q. Who did that belong to?

A. Well, it belonged to me.

Q. You had bought it?

A. It belonged to the family then threw a little

(Testimony of Walter Stegmann.)

interest in it, and I bought the interest out, but I don't know who it was registered to.

Q. How much was it worth?

A. Around four or five hundred dollars.

Q. All right, what else?

A. Well then, I had some money, as I remember, I got from this note, and this \$10,000 note that I had paid off on.

Q. Well, you had no money on the ten thousand note, did you, Mr. Stegmann?

A. Well, as I remember, I could write checks up to \$10,000 on it.

Q. Well, had you done that? I mean, had you cashed checks on the ten thousand loan arrangement and had the money? A. Oh, no.

Q. What you mean is you had other credit backing; is that right?

A. Yes, that is what I thought. [580]

Q. How much did you have left of the \$22,000 on August 13th? I will put it this way. How much money did you have on August 13th, 1951?

A. Well, I just don't remember exactly.

Q. Well, give us an estimate?

A. Well, I couldn't even do that because if I would buy something, why, I would take some money out, and if I would sell something I would put it back so I couldn't.

Q. Was your financial condition such that you could have swung a hundred thousand dollar timber deal?

Mr. Ryan: I object to the relevancy of that, your Honor.

(Testimony of Walter Stegmann.)

The Court: Objection overruled.

Mr. Strayer: I am sorry. I didn't hear.

The Court: Objection overruled, but I think the answer is obvious.

The Witness: I didn't quite get the question. What is the question?

Mr. Strayer: Will you read it?

(Question read.)

The Witness: You mean that I could pay a hundred thousand dollars for a timber deal?

Q. Yes.

A. Well, no, I couldn't have paid cash money for one, no. [581]

Q. Did you have enough money to make a thousand dollar down payment on an option?

A. I believe I had that much cash.

Q. Where did you keep that cash?

A. Well, I had it in this—I had it in a deposit box.

Q. This pin box that you carried around with you?

A. Well, I had it wherever we were living, yes.

Q. At that time you were living in Hood River—you were in The Dalles, I should say. You kept it in your apartment there in The Dalles?

A. Yes.

Q. Did you have enough money in that box so that you could have made a four thousand dollar payment at the time of the Election to Purchase?

A. Well, I just don't know. I just couldn't tell you exactly.

(Testimony of Walter Stegmann.)

Q. You have no idea at all; is that right?

A. That is right.

Q. Now, isn't it a fact, Mr. Stegmann, that at the time of your deposition, at the time your deposition was taken, first deposition on April 26, 1952, that at that time you testified that when you received this \$25,000 check from Mr. Parker on August 13, 1951, that you cashed that check and took the money in cash?

A. As I remember, in the deposition I testified to that [582] it was purely from memory over a long time ago, and I am able to state more now at this time that what—I believe I am more correct.

Q. Well, it is a fact, isn't it, that you had first testified in your deposition that you had received that \$25,000 from the bank in cash very shortly after you got the check; isn't that right?

A. Well, I was probably very much confused after a long session of talk. I mean, there was questions that I wasn't able to think very clearly, and I was confused, that I did have cash before, got cash when I got the note, I give him the note, that I was taking into consideration it was all cash. I paid him back for the cash.

Q. Well, you are giving me an explanation of why you testified, but all I want to know is—and you can explain it in any way you want to—but it is a fact, is it not, that you at first testified that you had received the \$25,000 from the bank; isn't that right?

A. If that is what it said, that is probably what I said.

(Testimony of Walter Stegmann.)

Q. Well, we had better get the deposition out.
Mr. Buell: Number 21.

Q. (By Mr. Strayer): Will you refer, Mr. Stegmann, to page 69 of your deposition?

A. What page was that?

Q. Page 69. Read over page 69, if you will, Mr. Stegmann, [583] and then tell me if you did not say that you received a check for \$25,000 and cashed it at McMinnville?

A. What was that again?

Q. Would you read the question, please?

(Question read.)

A. Well, I received a \$25,000 check for my assigning of the option to Mr. Parker.

Q. But you did not cash it, did you?

A. No, I figured it was the same as cash because I paid off this note which I had received cash for.

Q. All right, did you not testify on page 69 that you cashed the check at the bank at McMinnville?

A. Well, I was very much confused there.

Q. You did testify that way, though, did you?

A. If I did, that must have been what I said.

Q. You do not deny that that is the way you testified? A. No.

Q. All right now, isn't it also a fact that immediately following you were questioned about what you did with the \$25,000 in cash which you got with that check; that is right, isn't it?

A. Which page is that on?

(Testimony of Walter Stegmann.)

The Court: Page 70.

Q. (By Mr. Strayer): You do not remember yourself about your testimony on that? [584]

A. Well, I remember reading that, and I can't quite follow you here.

Q. Do you remember testifying that you used part of the money to buy some timber from a man by the name of Clay Brown?

A. Well, I think, as I remember, that was one piece. There were several pieces, you know, that I had a chance to buy.

Q. Will you look on page 75, if you will, Mr. Stegmann, reading these questions and answers at the top of the page:

“Q. You say you spent some of this money on other timber that you acquired? What timber is that? A. Some in Southern Oregon.

“Q. Where is the tract in Southern Oregon located? A. Around Grants Pass.

“Q. Whom did you purchase it from?

“A. Clay Brown.

“Q. How much did you owe for it?

“A. I don't remember the exact amount now.

“Q. Approximately how much did you pay for it?

“A. I think the figure was \$12,000, I believe.

“Q. Did you pay cash for it?

“A. Yes.” [585]

Q. Did you give that testimony?

A. Well, I see it here. Yes, I must have. As I

(Testimony of Walter Stegmann.)

remember, it was—I was supposed to pay that much cash for it if I would buy it, and that is what I was under the impression.

Q. Did you actually buy some timber from a man by the name of Clay Brown?

A. No, I was looking at several pieces of timber.

Q. But you did not actually buy it from him?

A. No.

Q. And you did not actually pay him \$12,000?

A. Well, if I didn't buy it I didn't pay him for it.

Q. You never have paid any money to Clay Brown?

A. No, that was supposed to be cash, and as I remember the contract there, I mean, there was an agreement. There was supposed to be some cash paid on the timber.

Q. But you never did pay it?

A. No, I think that was one of them, that I had several of them, I had chances to buy but I didn't acquire.

Q. I am glad you told me that because we have been beating the bush trying to find Mr. Clay Brown. We cannot find him. You never bought any timber from him?

A. Well, there was a man by that name I have been trying to find. What I mean, I did talk to him about buying timber. [586]

Q. But you did not buy any timber from him; is that right? A. No.

Q. We can consider that a closed chapter then.

(Testimony of Walter Stegmann.)

You spent none of the money in buying timber from Clay Brown, right? A. That is right.

Q. Why was it, Mr. Stegmann, that you had carried that check around for four or five weeks without cashing it, that \$25,000 check?

A. How long did you say it was?

Q. Do you remember the \$25,000 check?

A. Yes.

Q. You never did cash it; you finally gave it back to Mr. Parker about September 20th; did you not?

A. I believe that is what it—I mean, as I remember from—this thing, it was about September 20, I think it was, in the evening that I paid him that for his notes.

Q. Why didn't you cash the check?

A. Well, I really don't remember. It seems like I was pretty busy, and I didn't get into the bank in time.

Q. Didn't you need that money?

A. I had, as I remember, I must have had some cash left that I didn't need right away, and I felt that his check was good. There was no hurry to cash it. [587]

Q. You gave it back to Mr. Parker on September 20th for what reason?

A. Well, I don't exactly remember the real reason that—I did give it back, the reason for paying for the notes, but, as I say, as I remember the conversation in, over this, why, I don't know

(Testimony of Walter Stegmann.)

whether I had talked to him previously on the telephone or I just went over to his place, and that seems to be—it seems like—I was going to ask him if I could purchase more timber and keep the money to purchase some more timber or whether I should apply this to the notes, and I believe that he seemed kind of irritable and from his impression and all that I said, “Well, I will just, maybe I would just as well pay off the notes and have it cleaned up.” So I endorsed the check back to him in payment of those notes.

Q. Was he complaining then that you had sold him some timber to which the title was bad?

A. Well, I don't remember too much of that discussion. It seemed like he was pretty mad. I mean, he was kind of peeved. He does not say much when he is mad, as I remember.

Q. Your notes were not due at that time, were they?

A. No, but they were coming due fairly shortly. I mean, it was in November which was not too long away.

Q. Well, you had two months to go on the \$22,000 note. [588] Didn't you have any use that you could put the money to during the two months time?

A. Well, that was why I went to ask him about it. I felt that it was a, probably an obligation to see whether I could use his money. I mean, there was really no reason why I should have asked him.

(Testimony of Walter Stegmann.)

Q. Mr. Stegmann, did you pay the balance due on the \$22,000 note when it came due?

A. What was that?

Q. Have you paid the balance due on the \$22,000 note?

A. What was the balance now as I remember it.

Q. You still owe money on it now, don't you, today?

A. I was always under the impression, I mean, as I understand now, that I am, yes, owing some money, but I was under the impression all the time, I thought it was twenty or twenty-two thousand dollars, I thought it was twenty thousand dollars, and I thought that it was just about paid off when I paid him. At that time, as I remember, they didn't tell me that I did owe them any balance on the thing.

Q. Have you received some demands from Mrs. Parker that you pay the balance?

A. There could have been one time, it seemed like I might have got a letter, and I don't remember exactly.

Q. Didn't she write you a letter and ask you to pay it? [589]

A. There may have been a letter stating that I was owing some difference on the notes due yet.

Q. Didn't she ever talk to you about it and ask you to please pay it?

A. I don't recall. It is possible.

Q. Well, did you have the money to pay it?

A. Well, I didn't—it is possible that I didn't

(Testimony of Walter Stegmann.)

see the note to know just exactly how much it was for and know whether I did actually owe it or not.

Q. Mr. Stegmann, when you got that check for \$25,000 did you have some understanding with Mr. Parker that that would be applied on the note?

A. You mean when he give it to me?

Q. Yes.

A. No, I don't believe he mentioned anything about it being applied on the note. As I remember though, the notes were not due yet.

Q. There was not any conversation about giving you credit on your notes at all at that time?

A. Well, I don't remember any being said.

Q. Do you want us to understand that you were actually to make a profit out of that sale of the option of about \$20,000?

A. Well, I thought I was going to make twenty-five, but I think I will get kind of a rake-off there just a little [590] bit by having to pay off the four thousand dollars there for the completion of the option.

Q. Well, but that was your agreement; was it not, that you would pay the four thousand?

A. Yes.

Q. You did not object to that, did you?

A. Well, I may have. I don't remember. It seems like I wanted the \$25,000, and he would pay off the \$4,000, and it seems like that he said, well, he thought I should pay off the \$4,000, and I think that is the way he jewed me down on it.

Q. Well then, in addition to that profit on the

(Testimony of Walter Stegmann.)

sale of your option, do you want to be paid for your work of helping survey this reserved area then?

A. Well, this reserved area had to be set out, as I remember, and he wanted me to survey it so I figured that in as much as I would have to pay the \$4,000 I might just as well charge him a fair amount for surveying out these lines.

Q. Did you already know at that time that you had been cheated out of \$4,000?

A. Well, when all the discussion and the option was signed and he asked me about that, why then, I got kind of thinking about it, and it kind of appeared like that maybe I was only getting \$20,000 for it, I mean, as I [591] momentarily advanced that for it.

Q. Let us see if I understand you. You mean there on August 13th when you assigned the option that after you had assigned the option and put your name on the dotted line and he had given you a check for \$25,000, it suddenly came to you that you had been cheated out of \$4,000 on the payment, and so at that time you gave him a good stiff price on the surveying and that work; is that your answer?

A. Well, he asked me to do the surveying on the reserve area, if I would go up and do that, and it seems like he had rendered at that time, I believe that he had a cruiser, or something, or that he might have a cruiser to go in and look at the timber if I would show him the corner.

Q. That was Mr. Kenney?

Mr. Jaureguy: I do not think the witness used

(Testimony of Walter Stegmann.)

quite as harsh a term as "cheated." That was your invention.

Mr. Strayer: Well, Beacon, doesn't that mean cheated?

Mr. Jaureguy: It was bad enough what he said.

Mr. Ryan: He did not use quite as harsh a term as you, "charged him a good stiff price," either.

Mr. Strayer: I think this is cross-examination of an adverse party, your Honor. He can straighten it out.

The Court: Proceed.

Q. (By Mr. Strayer): What I am trying to find out—I do not need to put any terms on what you are thinking, Mr. Stegmann— [592] but you had a feeling that Mr. Parker had taken advantage of you to the extent of \$4,000; is that right?

A. Well, I kind of felt that I had in my mind I would like to have got about \$25,000, and after I got to thinking about my paying \$4,000, why, it would actually be \$20,000.

Q. All right then, you gave him a price on the survey of how much money?

A. Well, I don't remember what it was. Seemed like it must have been around \$50 a day, something like that, or seventy.

Q. Did you give it to him that way, or did you give him a fixed sum?

A. Well, I don't remember exactly. I noticed there was a fixed sum, I mean, was paid, and it is

(Testimony of Walter Stegmann.)

possible that I just could have roughly estimated the time it would take and figured it out.

Q. Did you hear Mr. Parker's testimony the other day that you agreed on \$362 payment?

A. I believe that was the figure.

Q. That was the agreement you made there on the night of August 13th?

A. Well, he wanted me to show this cruiser one corner, and I think there was some additional for that.

Q. That was \$20 additional; was it not? [593]

A. I don't remember the exact way it figured out, but it seemed like it was \$380 some dollars.

Q. All right, that agreement was made there on the night of August 13th; is that your testimony?

A. I am pretty sure it was.

Q. How did you arrive at your \$382? \$20 was for showing the cruiser, the time, so you had \$362 for your surveying. How did you arrive at that odd figure?

A. Well, I think it could have been that I wanted him to pay for my gas going up there, too, so I just added on \$2 for gas for good measure.

Q. So you said, "I will charge you \$360 plus \$2 for gas"?

A. I believe it would have been. I don't remember exactly.

Q. How did you arrive at the \$360. How many days at \$50 a day did you figure?

A. I don't remember whether it was \$50 or \$70 a day. It seemed like it was—I figured it prob-

(Testimony of Walter Stegmann.)

ably would take five or six days. I don't remember which it was.

Q. As a matter of fact, that was a pretty stiff price for the work that you did; was it not, Mr. Stegmann?

A. Well, it is a fair price, yes.

Q. A fair price, you say?

A. Well, I think so.

Q. How many days did you spend on the work?

A. Well, I can't remember exactly how many days it was [594] up there.

Q. It was not more than two or three days at the most, was it?

A. It must have been four or five days. I believe it was. I am not sure though exactly.

Q. Well now, I think you received that check in September, on September 10, 12, or 14, 1951, and you did not cash that check until December, 1951. How does that happen?

A. Well, I can't really give you any definite reason for not cashing it, only that I may have had enough cash that I thought of using the cash I had, and I felt that the check would be good, and in the event that I might lose it or something, why, it is possible that I could carry it around.

Q. But you had been carrying around \$22,000 in cash.

A. I didn't always carry it with me, no.

Q. I see, you did not need the money so you did not cash the check. All right.

(Discussion between counsel off the record.)

(Testimony of Walter Stegmann.)

The Court: Is this a new tack?

Mr. Strayer: Yes.

The Court: Is this a new line?

Mr. Strayer: Yes.

The Court: It is five o'clock. We will adjourn until nine-thirty tomorrow morning. [595]

(Evening recess taken.) [596]

(Friday, January 23, 1953, the trial was resumed at 9:30 a.m., and the following proceedings were had.)

The Court: I think Mr. Stegmann was on the stand.

WALTER STEGMANN

recalled, was examined and testified as follows:

Direct Examination

(Continued)

By Mr. Strayer:

Q. Mr. Stegmann, have you done any work for Mr. and Mrs. Parker since the Winans transaction?

A. Have I did work for—no.

Q. Have you received any money from them since the Winans transaction? A. No.

Q. Have you received any credit on any of your notes to the Parkers since the Winans transaction?

A. I would like you to explain that.

Q. You say that you have received no money. Have they given you any more credit on any of your notes since you turned back that \$25,000 check? A. Well, I don't—no.

(Testimony of Walter Stegmann.)

Q. What is that? A. No. [597]

Q. Have you shown any property that Mr. Parker had for sale since the Winans transaction?

A. No.

Q. Have you made any effort to sell any property for the Parkers since the Winans transaction?

A. No.

Q. Do you recall the Cottrell sale when Mr. Parker bought the Cottrell timber up in Washington in February, 1951?

A. Well, I don't remember the name distinctly. I remember some timber in Washington.

Q. That was the timber that was sold to the Weedman Lumber Company. Does that bring it back to you?

A. I remember showing the Weedman Lumber Company some corners on some property.

Q. Didn't you do anything no more than just show them the corners?

A. I just showed them the corners and approximate lines.

Q. Did you do the same thing with Mr. Rutherford? A. I do not remember.

Q. Do you remember taking Mr. Rutherford up there. Didn't you show the Cottrell property to him? A. I don't remember.

Q. Were you paid by the Parkers for that service? A. No.

Q. While you were over there at Hood River you bought a [598] piece of timber from Mr. Walker; did you not? A. Yes.

(Testimony of Walter Stegmann.)

Q. And later sold that timber to the Walton Lumber Company; is that right?

A. I believe it was, yes.

Q. Under that arrangement with Mr. Walker, you were to pay him some \$2,000 as the timber was cut; is that right?

A. Can I see a copy of the contract to refresh my memory on that possibly?

Q. Yes.

(Photostat of Timber Agreement dated June 22, 1951, marked Plaintiff's Exhibit No. 30 for identification.)

Mr. Jaureguy: I think the record should show that Exhibit 30 was also an exhibit attached to Mr. Stegmann's deposition.

Q. (By Mr. Strayer): Is Exhibit 30 a copy of a contract you had with Mr. Walker, Mr. Stegmann? A. Well, it appears it is, yes.

Q. That requires you to pay Mr. Walker \$2,000; does it not? A. To pay Mr. Walker \$2,000?

Q. Yes. A. No.

Q. How much did you agree to pay Mr. [599] Walker?

A. As it was, the purchase price is so much per thousand.

Q. Oh, you were to pay him so much per thousand as the property was logged? A. Yes.

Q. Well then, you sold it to the Walton Lumber Company for \$2,000; is that right?

(Testimony of Walter Stegmann.)

A. I believe it was about that.

Q. Have you ever paid Mr. Walker for the timber?

A. Well, they sent me—I think I have.

Q. Pardon? A. I think I have.

Q. When did you pay him?

A. It has not been too long ago.

Q. Recently, you mean? A. I believe it is.

Q. Did you pay that by check?

A. I don't know, I think my wife sent off the payment to him.

Q. Did you also negotiate for the purchase of some timber from Mr. Marsh up around Hood River or The Dalles? A. Yes.

Q. Which Mr. Marsh was that?

A. I believe his name was Bill Marsh.

Q. Is that the same Mr. Marsh that Mr. Parker was dealing with? [600]

A. Oh, I don't know.

Q. You never made a deal on that timber, did you? A. No.

Q. Going back to the Walker timber for a moment, Mr. Parker came out and looked at that timber; did he not? A. The Walker timber?

Q. Yes.

A. I don't remember whether he ever did or not.

Q. Well, didn't you say in your deposition that he had looked over the timber and decided not to buy it?

A. Well, I may have said that, but there was a

(Testimony of Walter Stegmann.)

logger wanted to buy it, and I think he was going to finance the logger. I believe it was Mr.——

Q. In February of 1952 you bought some timber up in the state of Washington together with a Mr. Kaltenberg; did you not?

A. Mr. Kaltenberg, I think located it for me.

Q. You bought it together and split the profits; did you not?

A. I paid him some for finding it.

Q. You gave him half the profit, didn't you?

A. I don't remember whether——

Q. Who financed that deal?

A. I paid for the timber.

Q. Was it your money? [601] A. Yes.

Q. Did Mr. Parker have anything to do with it?

A. No.

Q. Didn't you tell Mr. Kaltenberg that Mr. Parker was financing you? A. No.

Q. Then some time in 1951 didn't you get an option from Mr. A. L. Kennedy on some property near Meadow Lake?

A. I was trying to deal on some property.

Q. That deal fell through because of some disagreement over the cruising; did it not?

A. I think it was.

Q. Was Mr. Parker financing you on that deal?

A. No.

Q. Who was financing?

A. A man by the name of Mr. Hutchins was going to, and then he didn't.

Q. What is Mr. Hutchins' first name?

(Testimony of Walter Stegmann.)

A. I don't remember what his first name is.

Q. Is it Roy Hutchins?

A. I don't know. It is possible.

Q. Well, is Mr. Hutchins, by any chance, the father of Mrs. Parker?

A. I don't know that.

Q. You don't know that? [602] A. No.

Q. Now, in the summer of 1952 do you recall showing a piece of Mr. Parker's property to Paul Wardell?

A. Mr. Parker's property to Paul Wardell?

Q. Yes.

A. What was that date again?

Q. What is that?

A. What was that date again?

Q. Well, some time in the summer, spring, summer, fall of 1952? A. No.

Q. Did you ever show a piece of property owned by Mr. Parker, the west half of the southwest quarter of section 12, Township 4 South, Range 6 West?

A. I don't know that description.

Q. Well, it is out in the vicinity of the Pea Vine.

A. Oh, I had some property up on Pea Vine.

Q. Yes, but I am not talking about that, Mr. Stegmann. I am talking about some land that was owned by Mr. Parker up there which you showed to Mr. Paul Wardell as a prospective purchaser. Don't you recall that? A. No.

Q. Well, maybe this will bring it back to you. Don't you recall some difficulty? You showed him

(Testimony of Walter Stegmann.)

the property, and later on it developed that somebody had moved a [603] quarter-corner marker a quarter of a mile in one direction so that the property that you were looking at, while it apparently was Mr. Parker's actually it belonged to the Government? A. No.

Q. You don't remember any such incident as that? A. I know of no such incident.

Q. Mr. Stegmann, when was your first conversation with Mr. Parker regarding this Winans timber?

A. I believe—I am sure it was on a Sunday. It would be—I remember on August 12th. I think it was, that was a Sunday, wasn't it?

Q. August 12th, 1951, was the first time you ever talked to Mr. Parker about the Winans timber? A. Yes.

Q. How long had it been before that that you talked with Mr. Parker at all?

A. I don't remember.

Q. Had it been a month or a few days, or approximately——

A. I would say it was quite some time.

Q. You had been up in Hood River how long at the time, August 12th? As I understand it, August 12th you were back in McMinnville, but you had been up and back for some time, had you?

A. Yes. [604]

Q. Had you been in contact with Mr. Parker during the time you were in Hood River?

A. No.

(Testimony of Walter Stegmann.)

Q. When did you first talk to Mr. Winans about the property?

A. I can't recall the exact date. It was probably the later part of July or first part of August, 1951.

Q. When did you first go down to talk over business with Mr. Winans about buying it?

A. Well, it must have been within a few days of the time.

Q. About how long before you took the option did you get down to discussing price?

A. Well, it was in a matter of a few days.

Q. Can you give us the date how long before August—you took an option on August 11. About how long before that?

A. It could have been a week probably.

Q. Now, your telephone number over at Mc-Minnville at your home was 4984; was it not?

A. Well, I don't remember exactly, but I think it might have been.

Q. Mr. Parker's telephone number up in Vancouver was 41951; was it not?

A. I don't remember the number.

Q. I will ask the bailiff to hand you an exhibit marked 57-B. I will ask you to look over the first two sheets of [605] that exhibit and state if they do not reflect a telephone call from you to Mr. Parker on August 6th and a call from you to Mr. Winans also on August 6th?

A. Well, I don't remember making either one of these calls.

(Testimony of Walter Stegmann.)

Q. You have no recollection of them?

A. No.

Q. I think this exhibit also indicates a call on August 12th to Mr. Parker and one on August 14th to Mr. Parker, one on August 17th to Mr. Winans. Do you remember any of those calls?

A. It is possible that I—my wife may have called Mr. Parker on the 12th, or Mrs. Parker. I was supposed to tell them whenever I wrote a check against this \$10,000 note who the check was made to and where it was, what number was on it.

Q. Well, that would not have happened in August, would it, August 12th? That was before you had assigned your option, and you had no discussion with the Parkers about a credit on your \$10,000 note at that early date, did you?

A. What was that now?

Q. Would you read the question?

(Question read.)

A. I don't quite understand, a credit on the—

Q. Well, I will withdraw the question. [606]

Mr. Ryan: I think he was going to answer that question.

Mr. Strayer: I thought he said he didn't understand it. I do not know as it is too important anyhow.

Q. I call your attention, maybe this will bring the matter back to your mind on these telephone calls, according to this record there was a call from

(Testimony of Walter Stegmann.)

the home of Mr. Parker's residence on August 6th at 7:15 in the morning and then a call from your home to Mr. Winans' home at 7:50 at the same morning on August 6th.

A. I don't ever remember those calls.

Q. What, if any, representations did Mr. Winans make to you as to his title of this Lost Lake property?

A. Well, he told me that Ethel Winans owned the property and that he had an insurance, title insurance to it, and that he was going to take the description of the property off of the title policy for the option, and he couldn't locate it, of course. He searched for it, and he took that off of the tax receipts.

Q. Did he tell you anything about the Government's claim to a part of that property?

A. No.

Q. Did he tell you anything about having previously collected from a title company because of the Government's claim to part of the [607] property?

A. No.

Q. When did you first find that out?

A. When I first knew about that was when this lawsuit commenced.

Q. Up until that time you had no knowledge or no information about any defect in title or claim by the Government?

A. No.

Q. Did you ever talk to any representative of the Forest Service about it?

A. No.

Q. I assume from that then that you never told

(Testimony of Walter Stegmann.)

Mr. Parker anything about any defect in title or any claim by the Government?

A. No, I did not.

Mr. Strayer: I believe that is all, your Honor.

The Court: That is all?

Mr. Strayer: That is all.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. What is the earliest date, Mr. Stegmann, that you would say that you had any discussion with Mr. Winans?

A. Well, I would say around the 1st of August or possibly the latter part of July. [608]

Q. Tell us what the circumstances were of your first meeting.

A. Well, I understood he had some timber for sale. I heard about it in town, and I inquired where his place was, and I drove out to his place at Hood River to Dee, Mr. Winans' place. I met him, and I thought the way they described the place, a little service station there, and there was no one about, and I was about to leave, and a man come down from the highway, as I remember, and I asked him if he knew Mr. Winans, I think, and he introduced himself as Mr. Winans.

Q. Where had you heard about his having some timber for sale?

A. Well, I was eating lunch, some little restaurant there in Hood River, and I heard—I didn't

(Testimony of Walter Stegmann.)

know whether they were timbermen or loggers, they had something to do with timber—discussing this property; that he had some very nice timber up there, and he had been wanting to sell it.

Q. What place was that in; do you recall that?

A. Well, it seemed like it had some initials on it, B. and D. or something, B. and B. It was kind of an eating joint.

Q. You were not talking to these people that were talking about it, were you?

A. No. [609]

Q. You just overheard their conversation?

A. Yes.

Q. How did you locate Mr. Winans then?

A. Well, I remembered the name, and I think I inquired at some service station there in Hood River.

Q. How early had you been up there in Hood River County looking for timber, that is, how long before this time?

A. Probably two months, two and a half.

Q. You had been up around there for two to two and a half months?

A. Well, there and The Dalles.

Q. There and in The Dalles. Did you move up there and live at The Dalles about two and a half months before you first talked to Winans?

A. I think I may have been living in Hood River or at The Dalles. I lived at Hood River a short while, and then I moved to The Dalles.

Q. Well, had you had anything to do with

(Testimony of Walter Stegmann.)

Parkers' purchasing this log dump up there at Hood River? A. No.

Q. Although you were up there about that time?

A. Well, I don't know as he was up there. I didn't know he was there.

Q. Well, you were up there though. Two to two and a half months before the end of July would have put you up there [610] about that time, wouldn't it?

A. I think it was in the latter part of May, probably——

Q. That you went up there? A. Yes.

Q. You still maintained your home in McMinnville, however? A. I was trying to rent it.

Q. Well, you went back there occasionally and stayed at your own home during all that time, didn't you?

A. Well, we didn't have any renters there, and I did go back in to take care of the lawn and mow it and water it occasionally.

Q. You stayed there overnight?

A. Sometimes, but not too often.

Q. Now, without ever going to look at this timber that Winans was supposed to have for sale, you went to look up Winans, did you? A. Yes.

Q. Tell us about your first conversation with him.

A. To be exact, I am not sure, but we did talk about—Mr. Winans and I—that he had some property up there for sale, and it had some timber on it

(Testimony of Walter Stegmann.)

and that he did want to sell it, but he had promised it to some other people, and he didn't know whether I would be able to purchase it until he contacted these other people and give them the [611] first opportunity to buy it, as was my understanding.

Q. What did Mr. Winans tell you that he had up there at Lost Lake?

A. He said that he had around, I think it was 60 or 65 acres or somewheres about.

Q. Did he describe it to you any further as to what timber there was on it?

A. I don't remember his describing the exact amount of timber. He seemed to mention that it was a very heavy stand of timber.

Q. You told him you were looking for timber land, did you?

A. I don't remember him describing the exact that I told him I was looking for land with timber on it.

Q. Didn't you tell him, Mr. Stegmann, that you were looking for a place quite a ways from civilization where you could build a fine home?

A. I don't know as I ever did.

Q. How were you clothed when you came up there, in the—just describe yourself, will you, please?

A. Oh, I don't remember what I was wearing at the time.

Q. Would you say that in general you were dressed like a cattleman instead of a logger when you came up to see Mr. Winans?

(Testimony of Walter Stegmann.)

A. I wouldn't say that. [612]

Q. That you told Mr. Winans that you were in the cattle business?

A. I don't know as I ever told him that I was. I told him that I had raised cattle, yes.

Q. But that your business was white-faced cattle? A. No.

Q. You didn't tell him that. Didn't you also tell him that you were not at all interested in logging, knew nothing about logging whatsoever?

A. Oh, I don't know as I told him that. I felt rather foolish that a man of his age, being logging all his life, and telling him that I was a perfectly experienced logger.

Q. It was because of his greater age that you pretended not to know anything about logging?

A. I didn't pretend, no.

Q. Well, Mr. Stegmann, at any rate, you didn't tell him that you wanted this property up there just for a home? A. What was that question?

Q. You did not tell him that you were looking for property just for a home?

A. As I remember, I told him that I was looking for property with timber on it.

Q. Didn't you use the words that you were looking for a private retreat?

A. I don't remember saying that. [613]

Q. All right now, at this first conversation there was nothing said about any price or whether any deal could be made or not?

(Testimony of Walter Stegmann.)

A. Not at the first one, as I remember. I am not sure.

Q. All right now, what did you do about examining the property?

A. He told me, I think, approximately, he did tell me approximately where it was located, and from the description, and I did have Metsker maps of a lot of places in Hood River County. I had been looking at different pieces of timber to purchase, and he told me approximately where it was so I went up to take a look at it.

Q. He had not given you a description; he just told you in general where it was located?

A. Yes.

Q. You went up then, and what did you do, look at it?

A. I don't believe that I got on the property the first time I went up there. I am not sure. He may have showed it to me later, and then I went back. I don't—

Q. Did you say that he may have been up there with you before you signed the option?

A. I believe that him and I did go up there before. I am not positive though on that. It was about the same day.

Q. Of course, you were not talking about—he was not talking about selling anything to you. There was nothing said [614] about any title or ownership at this first meeting?

A. I don't believe there was.

(Testimony of Walter Stegmann.)

Q. You recall particularly that he mentioned that he had about 65 acres there, 60 or 65?

A. I think it was somewhere over 65 or 60, and he give me fractions. I think now, as I remember clearly, 65.88 or something like that.

Q. About when did you see him the next time?

A. Well, it seemed like it was within a few days because he was supposed to know whether these other people were going to take it or not going to take it.

Q. Where did you see him the next time?

A. I believe it was at his little office there in Dee or this side of Dee.

Q. Just a few days after the first visit?

A. I am not clear exactly on the amount of days. It seemed like it was.

Q. Tell us what conversation you had with him on this second occasion?

A. Well, it seems like he had a—he had not known particularly yet whether these people had made up their mind. It seemed like there was one fellow connection with another, and they had a conference back and forth, and that he was not sure, but if he did sell it he wanted—I believe it was on that deed. I am not sure that [615] he wanted \$100,000 for the entire property.

Q. Well, at that time, about this second conversation, during this second conversation he put a price of about a hundred thousand on it; is that correct? A. He may have.

Q. Well, may have, what is your recollection on it, Mr. Stegmann?

(Testimony of Walter Stegmann.)

A. I don't remember whether it was at the second meeting or which meeting it was, but at one time before I bought the option he priced it at a hundred thousand dollars.

Q. You signed the option at a hundred thousand, didn't you? A. Yes.

Q. So there had to be a hundred thousand mentioned at that time. Was there at any of these meetings any discussion regarding the sale of only the 25.88 acres, retaining from three to five acres out?

A. No, he wanted to reserve some acreage there, but as I always thought it was all one piece of property, so much for one piece of property——

Q. You thought it was one piece of property, but you knew that it was two pieces of property; isn't that right?

A. Well, there was 40 acres, and then in one-quarter-section there was 20, a smaller piece was in another quarter-section which actually would be on each side of a line but still [616] would be considered all their property.

Q. They were described as two different tracts whenever you saw them mentioned at all, weren't they?

A. As I believe, there might have been on the tax receipts Lots 1 and 2.

Q. Well now, with respect to the time that you signed the option or that the option was given to you, when did you come to an agreement with him, that is, when was this meeting where you came to an agreement with him?

(Testimony of Walter Stegmann.)

A. What was that again? I didn't get it.

The Court: I think this is a good place to stop. We will take a recess.

(Recess taken.)

Q. (By Mr. Krause): Would you read the last question, Mr. Reporter?

(Question read.)

The Witness: You mean where was this meeting I come to an agreement?

Q. It was when, I think. When did you come to an agreement with him with respect now to the 18th of August—or the 11th of August, the date on which the option was given to you?

A. I don't quite understand you on that question, I mean not clearly.

Q. Well, let's withdraw that question. [617]

Q. You had to come to an agreement as to price and terms. When did you come to an agreement with Mr. Winans as to terms and price?

A. You mean the day?

Q. Well, with respect to the 11th of August?

A. I do know on the 11th of August, I mean that I did take an option from him on the property and that he had the price in there on the 11th of August.

Q. Well, when had you agreed on that price with him?

A. Oh, I imagine we had agreed on that probably a few days before. We had to agree on that.

Q. Probably a few days before? A. Yes.

(Testimony of Walter Stegmann.)

Q. Then what you now say is that you had, you had this first preliminary meeting with him where you did not discuss any price at all and he didn't—he said he was talking to somebody else about it. Then you had another meeting with him where he had not yet, was still not able to talk to you about a price; is that correct?

A. I don't know, he might have mentioned the price, but at that time he still was not able to sell the property to me.

Q. All right then, you had a third meeting some time before the 11th of August in which he gave you a price on it?

A. At some time, yes, he gave me a price [618] on it.

Q. And that was before the 11th of August?

A. I believe that he had, yes.

Q. In your deposition you testified, didn't you, that you only saw him twice prior to the signing of the option? A. In my deposition, yes.

Q. That is, just once before the date of the option, and then you saw him again on the 11th of August. That is what you said in your deposition, didn't you? A. Yes.

Q. But now you think that you saw him at least three times prior to the date of the option?

Mr. Ryan: Without interrupting whatever, he changed his deposition. He did amend that, that there might have been another time.

Mr. Krause: Oh, there might have been another time. Oh, I didn't see that.

(Testimony of Walter Stegmann.)

Q. Well then, in the deposition you thought there might have been two times where you talked to Mr. Winans before the day on which the option was signed, but now you think there were three?

A. I don't remember the exact amount of times. It has been so long ago that I had seen him. It was a very few times before the option was signed.

Q. Besides seeing him you telephoned him several times, too, to ask him whether he was ready to talk to you about [619] that sale?

A. I don't remember any telephone conversation. It is possible though.

Q. Actually, you saw him four or five times at least before the day on which the option was signed; isn't that correct?

A. I can't remember just the exact amount of times I had seen him, but it was very few times.

Q. Well, that time you ran him down in Hood River don't you remember that you found him down in Hood River and you discussed the matter right there where your cars were parked?

A. Well, I remember happening to stop for him and meeting him at Hood River because he was getting out of his car right in front of me, and the streets are very narrow there, and I do remember stopping, and probably I may have talked for just a short while. I was parked in the middle of the street.

Q. Well, on that same day you had been out to his home first, and they had told you where you

(Testimony of Walter Stegmann.)

might be able to find him, and then you trailed him into Hood River; don't you recall that?

A. I don't remember that.

Q. Well now, prior to the time of the signing of the option, yes, well, including the day on which the option was signed, [620] what discussions did you have with Mr. Winans regarding the title?

A. All I know is that he had his sister, Ethel Winans had owned the property, deed to the property, as I understood him, and that they had a title insurance or title policy which he tried to search for and could not locate, and that is all I know.

Q. Well then, all they told you was that they had a title policy; is that right?

A. Yes, he searched for it and tried to find it and show me.

Q. He didn't say anything about whether there were any defects in the title or whether the title was good?

A. No, only I know that they had—he said Ethel Winans had a deed to it, as I know, and that they had a title policy for it.

Q. What section was this land in?

A. Why, it was in section 16.

Q. And what are sections 16 and 36 ordinarily in Oregon?

A. They are school lands, as I understand it.

Q. School lands. Do you remember having discussions with him about this being in a school land section?

A. Well, in section 16, he may have mentioned it

(Testimony of Walter Stegmann.)

was a school land, but I don't remember discussing.

Q. You mentioned repeatedly that it was a school land [621] section; don't you recall that?

A. You mean to him?

Q. Yes, with him while you were talking about buying the property? A. I don't remember.

Q. You don't remember. Now, tell us just how you arrived at this price at a hundred thousand?

A. I didn't arrive at the price; he did.

Q. You made no counter-proposal?

A. Well, I had looked at the timber, as I remember, when—and I figured it was well worth that much and more.

Q. So when he put a value of a hundred thousand on the property you made no counter-proposal?

A. That, I don't remember.

Q. You don't remember.

A. I may have said that it seemed like a lot of money, but that was all.

Q. Because of the fact that you had looked at the timber up there, you didn't haggle about the hundred thousand dollars at all? A. No.

Q. Now, Mr. Stegmann, isn't it a fact that your first discussions with Mr. Winans involved only the 25.88 acres less some three to five acres that were to be held out? A. No. [622]

Q. You didn't talk to him about buying just one part of the 25 acres?

A. I always understood that the whole piece of property, the 65 acres or 80, what percentage they wanted, it was all in one piece, and that they wanted

(Testimony of Walter Stegmann.)

to reserve a small portion of it, and that was the way I understood it.

Q. Isn't it a fact, Mr. Stegmann, that your first discussions involved only the payment of \$80,000 for the property adjoining the lake, that is, the 25.88 acres less the part to be retained?

A. No, I was, always considered it as one piece of property.

Q. Well, all right. Then your answer is now that there was no discussion on that; is that right?

A. No.

Q. Is that correct?

A. What was that again now?

Mr. Jaureguy: He said "No" in a loud voice when you first asked him.

Mr. Krause: All right, may we have that in the record? Is that correct; that is what he did say?

Mr. Ryan: He said "No."

Mr. Jaureguy: It is already in the record.

Mr. Ryan: He said "No."

Mr. Krause: What I heard, that he always considered [623] the piece as one piece.

Q. (By Mr. Krause): All right, Mr. Stegmann, there was no discussion then regarding an addition of that 40 acres, the 40 acres lying behind the 25?

A. No.

Mr. Ryan: I object to that question. I think there should be some clarification, what you mean by an addition of acres behind, 40.

The Court: I know what he means.

(Testimony of Walter Stegmann.)

Mr. Ryan: I guess I didn't. I am sorry, your Honor.

Q. (By Mr. Krause): Mr. Stegmann, do you recall telling Mr. Winans after he had told you that they couldn't sell the 40 acres and give a good title to it that you wanted whatever title they had so no one else could come in there and denude the hillside and spoil your home site in front there?

A. I never did tell him anything like that.

Q. You didn't; that some other logger would come in and cut the trees down on the 40 acres and ruin that as a recreation site. You had no such discussion? A. No.

Q. Isn't it a fact, Mr. Stegmann, that upon your insistence Mr. Winans finally put a price of \$20,000 on their interest or right and title to the 40 acres?

A. No, all I know, that he wanted a hundred thousand [624] dollars for this property they had up there, this 65.88 acres, and that was all I knew.

Q. At one time through negotiations with him you discussed buying just the 40 acres and not buying the 25 acres; do you recall that?

A. No, I considered it always one piece of property.

Q. Well, maybe you do not quite get my question. After the option had been signed did you and Mr. Winans have a little difficulty agreeing upon what part of it was to be withheld or reserved?

A. Well, it seems like there was quite some difficulty in—he was—I remember the agreement was in this option to reserve this kind of a swamp land up

(Testimony of Walter Stegmann.)

there and leave as many trees as possible, and then he would change his mind from time to time, but this was all supposed to be in one block, and it was a terrible thing to get squared.

Q. All right, you did have some difficulty in agreeing with you on the reserved property?

A. Yes.

Q. During those discussions did you suggest that you would forget about the 25-acre tract and just take the 40 in back? A. No.

Q. You had no such discussion. At that time didn't you make him an offer on just the 40 acres without the property [625] in the front?

A. No.

Q. Had you had any discussion with Paul Winans, either before the option was signed or afterward, about furnishing either an abstract or title insurance to the property?

A. What was that question again?

Q. Did you have any discussion with Mr. Winans before or after the option was signed regarding his furnishing either an abstract or title insurance?

A. Well, I never did have any discussion with him on him furnishing either one.

Q. Then, as you understood it, he was not supposed to furnish any abstract or title insurance?

A. Oh, I don't know as there was anything on the option of that.

Q. Of course, my question related to discussion, Mr. Stegmann. Did you have any discussions with Paul Winans about his furnishing an abstract or title insurance? A. No.

(Testimony of Walter Stegmann.)

Q. Was there any such discussion at any time in your presence?

A. There might have been, yes. I believe there was. It seems like it was on August 18th that—in the evening of August 18th. Let's see, I think it was about dusk Mr. Parker come up there, and they were having some [626] discussion on who was going to do what, but I didn't, had nothing to do with it.

Q. They were having a discussion about who was going to do what?

A. They were having a discussion on the, who was going to furnish—it seems like he was going to furnish an abstract because he already had a title policy or something like that.

Q. By "he" you mean Winans?

A. Winans, he said that they would probably furnish an abstract, but they already had a title policy, and he, I think, attempted, Mr. Winans did, to look for that title policy that same evening.

Q. You had him looking for the title policy earlier than that, too, didn't you, in your talks?

A. I didn't have him looking for it, but he did it on his own by looking for it to get the description of the property.

Q. Is this the second occasion that he was looking for the title policy?

A. Yes.

Q. The first time he was looking for it to get the description off of it?

A. Yes.

Q. And now he was looking for it in order to show it to [627] Mr. Parker?

(Testimony of Walter Stegmann.)

A. I believe that is what he was doing.

Q. Have you your testimony up there, Mr. Stegmann, or would you please take a look at—it is Exhibit 21, page 116.

(Exhibit presented to witness.)

Q. Mr. Stegmann, you have your testimony there that was taken on April 26, 1952; have you not?

A. Yes.

Q. Now, turn to—oh, yes, pardon me, this was taken later. This seems to be May 20, 1952. Turn to page 116 in that second deposition. Start at the top of the page.

The Court: How does it start?

Mr. Krause: Well, at the bottom of page 115 to get the connection.

“Q. When Mr. Parker got there—” this is on the 18th of August— “was he introduced to the other persons present?”

Your answer is: “I don’t remember, but I believe so.”

“Q. Was he introduced by his name ‘Chet L. Parker’? A. Yes, I am sure he was.

“Q. Was there any discussion about his interest in the property?

“A. As I remember, there was. I don’t remember whether I told him before or not, told Mr. Winans, but, as I [628] remember, I told him again that Mr. Parker had purchased my option on the thing and

(Testimony of Walter Stegmann.)

that from then on he and Mr. Parker were dealing. I was merely there, hired to run the lines and stake out this reserved portion."

Q. You recall so testifying, don't you?

A. Yes.

"Q. Was anything else said about Mr. Parker's interest in the property that night?

"A. I don't remember that there was.

"Q. Was there anything said about getting title insurance on that property that day or evening, in the presence of any of the Winans family?

"A. I don't remember.

"Q. Either the day or evening of August 18th?

"A. I don't remember.

"Q. When you say you don't remember, you mean something may have been said about getting title insurance on the property or it might not have? You can't tell one way or the other?

"A. If there was, I don't remember hearing it."

Q. Did you so testify? A. Yes. [629]

Q. Now, you seem to think that something was said about it, Mr. Stegmann?

A. Well, this was taken quite some time ago, and I do know it is what I could remember at that time, and there seemed like there might have been some discussion, and I seem to remember more clearly that it was.

Q. Who refreshed your memory on it, Mr. Stegmann?

A. I have read this deposition over and over, and I have been doing quite some thinking on it.

(Testimony of Walter Stegmann.)

Q. So although on May 20 last year you could not remember it, but now nearly a year later you do remember it?

A. Well, there is other discussions discussed where it brings this to me some times.

Q. Was August 18th the first date on which Mr. Parker became, Chet Parker became acquainted with Winans, so far as you know?

A. So far as I know, yes.

Q. That is, you had not seen Parker and Winans together prior to August 18th; is that right?

A. That is correct.

Q. What time of the day was it that they were together?

A. Well, I am sure it was in the evening.

Q. When had you exercised the option?

A. After I had been up on a survey with Paul Winans, and that morning on this surveying trip, as I remember, going [630] toward, we had to walk some distance from where we parked the car to go into the property, and I am sure I told him at that time that Mr. Parker had bought my option and that from there on him and Parker were dealing.

Q. All right, that is on the morning of the 18th of August before you exercised the option. You told him that Parker had bought the property, and Winans was dealing with him from then on; is that correct?

A. Yes.

Q. But now, my previous question was when did you exercise the option?

A. That some evening when I sold the option I—

(Testimony of Walter Stegmann.)

it was—Parker wanted me to—yes, I mean, I would pay the \$4,000 on to the balance of the option and on the—and sign—or this extension on the reserved area.

Q. When had you sold the option?

A. It was August 13th.

Q. Where were you at the time?

A. At The Dalles, Oregon.

Q. But it was on that night, on the 13th, that Mr. Parker asked you to pay the four thousand and get a written extension?

A. No, it was on that evening that he asked me to pay the \$4,000, and I would be hired, he would pay me so much to run the lines and set forth this reserved area in the [631] property.

Q. Nothing was said then about your arranging an extension for the surveying of the reserved acreage?

A. No, because I didn't know that we were not going to accomplish the surveying on the Saturday.

Q. At any rate, at what time of the day was it now when you signed the paper exercising the option?

A. I don't remember signing the Election. You mean, are you talking about the Election?

Q. The Election to Purchase, yes.

A. I remember signing the extension of time. It seems like there was a little argument there. I was paying the \$4,000, but I didn't know whether I was to sign the acknowledgement of Election to Purchase or not.

(Testimony of Walter Stegmann.)

Q. Why didn't you want to sign the Election to Purchase?

A. Because him and Parker, I had sold my option to Mr. Parker, and him and Parker were dealing from then on. I had told him that in the morning.

Q. In your deposition you testified positively that you had not signed the Election to Purchase; isn't that right?

A. I didn't think I had. I was sure that I hadn't, but——

Q. I am asking you whether in your deposition you did not in three different places testify that you were absolutely sure that you had not signed the Election to Purchase?

A. Yes, I said that. [632]

Q. That is what you did. Now then, what do you say now about whether you signed it or not?

A. Why, I don't think I signed it.

Q. You don't. Will you please hand him 307.

(Exhibit No. 307 handed to witness.)

The Court: Did he sign near the top?

Mr. Krause: Yes, the Notice of Election is on the top of the paper, and on the bottom of the paper there is an Acknowledgment of Notice.

Q. On this Election, up in the first paragraph there, is that your signature, Mr. Stegmann?

A. Well, I am not sure, but it looks like it here.

Q. You won't deny that it is your signature, will you?

(Testimony of Walter Stegmann.)

A. I didn't think I signed it. I was sure I hadn't.

Q. You had said that many times, Mr. Stegmann, but is that your signature?

A. I am not positive, but it looks like it.

Q. Is that your signature down below under the word "approved"?

A. Yes, I remember signing this.

Q. Do you see any difference in the two signatures?

A. Well, they resemble each other, only one does not have the "t" crossed in the last name.

Q. Do you usually cross your "t" when you are writing "Stegmann"? [633]

A. I always thought I did.

Q. You always crossed it, and the upper one is crossed, the "t" in the "Stegmann" on the, in the first place?

A. It does not show here.

Q. It does not. Well now, Mr. Stegmann, did you read over this Notice of Election to Purchase before you put your signature on it?

A. I did read it. I am sure. There was so many, it seemed like there was so many copies to sign, and I may have signed it by mistake.

Q. By mistake? You carried away copies of this instrument; did you not?

A. I did take a copy, and I am not sure that I give that copy to—I believe I give a copy to Mr. Parker that evening when he was there, and I remember that copy did not have my signature up on the top line.

(Testimony of Walter Stegmann.)

Q. The copy that you carried away you had not signed?

A. I don't remember it. I don't remember having it signed.

Mr. Jaureguy: He didn't say that. Go ahead.

Mr. Krause: Let us find out.

Q. Did you sign the copy that you carried away?

A. Well, the copy that I had and I give to Mr. Parker that evening, I remember it only had one signature on the bottom of it.

Q. It had your signature on the bottom? [634]

A. Yes.

Q. It also had Paul and Ethel Winan's signatures, I suppose? A. Yes.

Q. Now, the acknowledgment, will you read the Acknowledgment of Notice there? Who is it addressed to? Is it addressed to Walter Stegmann?

The Court: Well, the instrument speaks for itself.

Q. (By Mr. Krause): Did you say that you read this instrument over, Mr. Stegmann, before you signed it?

A. I was particularly more interested in the—we were discussing the reserving this area, and that seemed to be the biggest part of our discussing, and Winans seemed to be more concerned about getting a reserved area set forth and an extension on the time, and that seemed to be more or less our discussion, and I don't remember—I read the other one and I do remember the, giving the extension of time more clearly than anything else.

(Testimony of Walter Stegmann.)

Q. Well, is it your testimony then that you remember reading it or that you do not remember reading it? A. Why, I remember reading it.

Q. You remember reading it. What had occurred during the day, Mr. Stegman, on August 18th? You and Paul Winans, you said, had been up on the property to try to survey the reserved area. Were you doing the surveying? [635]

A. Well, I was helping doing some of the surveying, but he had some surveyors from Portland there. I didn't remember their names at the time, but I think one is Mr. Haines now, as I remember it.

Q. Were there one or two of them?

A. There were two of them.

Q. In addition to yourself and Paul who else was there?

A. Well, my brother, Carl, was there.

Q. Was this the first time that you and Paul Winans had been on the property together?

A. No.

Q. You had been on it before? A. Yes.

Q. What was the previous occasion that you had been on the property?

A. I am sure it was about a week before this survey party.

Q. Well, that would have practically put it on the date on which you signed the option the week before?

A. I believe it was on that same day that we went up there, I don't know, Paul Winans and my-

(Testimony of Walter Stegmann.)

self went up there that morning, but I am not too positive.

Q. The day the option was signed?

A. Yes.

Q. Now, on this August 18th you were on the property that was involved in this purchase, and you assisted in the [636] survey. By the way—is that right, Mr. Stegmann?

A. Well, yes, I was helping them, assisted, but these surveyors had the instruments that I wasn't familiar with. I mean, the type of surveying I do so I merely did what I could to assist them, pulling the tape——

Q. While we are on this survey, Mr. Stegmann, just tell us what training and experience you had had in that line.

A. Well, the experience is——

Q. Let us have the training first, if you will.

A. I've had no special training in surveying.

Q. Have you had any training that is not special in surveying?

A. The only training, I haven't had any training. The only experience is doing, running lines, and cruising timber.

Q. Well, cruising has nothing to do with surveying, has it, Mr. Stegmann?

A. Quite often you have to survey out your lands to find the property before you can know which piece of timber you are going to cruise.

Q. Well then, whatever you know about surveying was gathered while in, out of practical exper-

(Testimony of Walter Stegmann.)

ience; is that right? A. Yes.

Q. What were these instruments that these surveyors had that you didn't understand how to [637] use?

A. Well, they had a transit, as I remember. Yes, it was a transit and no compass on it, and they merely had to go by positive directions and then figure—I don't understand it, I mean, it is——

Q. What other instruments are used in surveying besides a transit? A. Compasses.

Q. Anything else?

A. Well, I imagine there is several I don't know about.

Q. Do you use any chain or anything for making measurements?

A. Oh, yes, you use a chain. There is a staff compass that you use.

Q. I suppose these surveyors were equipped with chains in order to make measurements?

A. Yes.

Q. Did you have any such equipment?

A. On that day I did not, only my pocket compass.

Q. Well, did you have any equipment of that sort any time while you were up on the property?

A. Up later, yes, I had some equipment.

Q. What kind of equipment did you have?

A. Well, I had, I think when we finished setting out, yes, when we set out the reserved area I had a chain and a staff compass.

Q. Is that the same compass that you had on

(Testimony of Walter Stegmann.)

this former [638] occasion? A. Yes.

Q. Where had you gotten the chain?

A. Well, I don't remember just where I did buy it.

Q. You bought it specially for this surveying job up there?

A. Oh, no, I have had it for several years.

Q. Oh, you brought it up there with you?

A. I quite often carry it in the car, yes.

Q. All right, now, these two men with whom you were engaged in surveying the reserved area, was there any discussion among you men there regarding the—particularly the title to the 40 acres?

A. No.

Q. No discussion particularly regarding the necessity probably of an act of Congress in order to get a title to it? A. No.

Q. Was there any discussion there about this Section 16 being school land?

A. I don't remember that either.

Q. There were no discussions that you recall?

A. No.

Q. Relating to the ownership of the 40 acres: is that right? A. What was that?

Q. There was no discussion on that day while up on the [639] property regarding the ownership of the 40 acres? A. No.

Q. When did you go up to the property on the next occasion to continue with surveying this reserved area?

(Testimony of Walter Stegmann.)

A. There were several occasions. I don't know of a one distinctly, but it was within a few days.

Q. Within a few days, and who went up on that occasion?

A. There may have been another surveyor at that time come up there. I don't recall.

Q. A different surveyor than those we have discussed here?

A. That one time there may have been the same men there, I am not sure, and then there was another man, I believe. They were trying to take some more surveying.

Q. Now, you say that Parker was up there at Mr. Winans' place on the 18th. That is the date on which you elected to purchase. Now, when was the next time that Mr. Parker, that you saw Mr. Parker and Mr. Winans together?

A. Well, the exact date would be pretty hard to say, but it probably was the latter part of August, that the reserved area had to be set out before the deed could be completed, that is, the description could be entered into the deed; and that Parker went to Mr. Winans' place, and I went with him, and we stopped at—yes, it was his place at a little office there, to see if he was ready to go up and finish staking off the property. [640]

Q. Well, it was with these same surveyors, Mr. Haines and Mr. Kenny, you were up there toward the latter part of August still trying to survey the reserved area?

(Testimony of Walter Stegmann.)

A. Oh, it was after the 18th of August, I know.

Q. It was after the 18th of August. Will you please hand Mr. Stegmann Exhibit No. 308.

(Exhibit No. 308 referred to tendered to the witness.)

Q. Is that your signature on that Exhibit 308?

A. Yes, it looks like it.

Q. What other signatures are there on there?

A. Oh, I don't see any—oh, yes, there is Paul Winans' signature there.

Q. Your signature and Paul Winans, and what is the date? A. It is August 26th.

Q. Is that the date on which you signed that?

A. Well, I don't—I can't recall the exact day. No, it is possible. If it says here it is that date, it probably was that date.

Q. Do you know where it was signed?

A. It may have been signed at his office or it may have been signed out in the field there, but I don't know.

Q. Was that one of the dates on which Haines and this other surveyor were there trying to have surveyed this reserved area? [641]

A. Well, on that exact date I can't say exactly.

Q. At any rate, on the 26th of August you were again agreeing with Winans for an extension of time to set out the reserved area?

A. Yes, that I was supposed to set out this reserved area, and it had not been accomplished, I felt I could agree to an extension of time.

Q. Well, you did, anyway? A. Yes.

(Testimony of Walter Stegmann.)

Q. Will you show that to counsel. I think everybody has seen it.

Mr. Ryan: I would like to see it.

Q. (By Mr. Krause): This paper that you signed there says that the deal has finally got to be completed on September 10; does it not?

A. Well, that is what it says on there. I just recently read it now.

Q. Well, why did you make that demand that it had to be closed by September 10th?

A. I don't know whether that was agreed by him or—it seems like it was his proposal.

Q. Both of you agreed to it because you signed it, but you think that Paul Winans said, "This has got to be closed by the 10th of September"?

A. It is possible. [642]

Q. You did not demand that it be finished by the 10th of September, did you?

A. As I remember that, the partners had kind of insisted that this reserved area was set aside and that there may have been some discussion on it.

Q. Parker did not demand that the reserved area be set aside, did he? That was in the option.

A. Well, it had to be staked out.

Q. Yes, it had to be surveyed. Well, what is your recollection now as to who fixed that date of September 10th, you or Winans?

A. I don't know.

Q. You don't know. Of course, Parker was not there, was he?

(Testimony of Walter Stegmann.)

A. I don't know on this date exactly. I don't think he was on this date, no.

Q. Now, a day or two after that survey on the 26th, that Saturday, the 26th was Saturday. The 18th, you know, was a Saturday. A week from that would have been the 25th, and the 26th was Sunday.

Either the next day or the day after that do you recall coming up to Dee with Parker?

A. Which day was this now?

Q. A day or two after the 26th.

A. Oh, it was sometime in the latter part of August. I think it was after the 18th that Winans and I worked—this [643] was the day that had not been set forth, and that Parker went up with me to see if they could get the reserved area set aside.

Q. Well, let me see if I can refresh your memory as to something that occurred on the 26th.

The reserved area had not been set aside. That is, you had not, by the 26th you had not completed surveying the reserved area, had you?

A. I gather from this, yes.

Q. All right, so on that day you said you had a friend who was a surveyor; do you recall that?

A. I don't recall that.

Q. Well, did you tell them that you have a friend, a surveyor that was a friend of yours that you could bring up there? A. No.

Q. You didn't, and then on the following day or the day after that you brought Mr. Parker up there?

A. Well, that is one time Parker went up with me and Mr. Parker and his son and myself went up

(Testimony of Walter Stegmann.)

to Paul Winans' place in the latter part of August to—I was trying to get this reserved area set out, and it seems like there was an agreement between Mr. Winans and Parker that it was supposed to be done by the 10th of September, and there we spent all this time mostly trying to survey out this reserved area [644] with Winans, and he still hadn't accomplished it.

Q. Well, I will ask you whether you did not on the 27th or 28th of August come up there to the place where Mr. Winans lived and introduce Chet Parker as this surveyor friend of yours?

A. No.

Q. At any rate, you did bring him up there and introduce him to Mr. Winans?

A. Why did I? Mr. Parker had already been introduced to Mr. Winans.

Q. On the 18th? A. Yes.

Q. He had not been up there any time after that though that you know of, had he?

A. Well, not that I know of.

Q. All right, but, at any rate—did you stop there at Mr. Winans' place and talk to him the day you went up to Lost Lake?

A. Oh, yes, he was supposed to go along, and, after all, it was his privilege to agree where the reserved area was to be.

Q. So you stopped and talked to him?

A. Yes.

Q. You asked Mr. Winans to come along?

A. Well, I assumed he was going to go along.

(Testimony of Walter Stegmann.)

Q. At any rate, on that day you and Mr. Parker and his son [645] went up there by yourselves?

A. I think it might have been because, it seemed like Winans was pretty busy doing this and that, and had a housing project there he was taking care of, and they didn't have the time to go that date.

Q. A couple of days after that you and Parker and his son and Paul Winans and Ross Winans went up there again to do some surveying; is that right? A. Yes.

Q. And this time Parker and his son went along, too; do you recall that? A. Yes.

Q. Did Parker and his son assist you in surveying at that time?

A. They assisted me in surveying, setting forth this reserved area.

Q. This time you had no trained surveyor along unless Mr. Parker was?

A. Well, I don't know as Mr. Parker knew too much about it.

Q. All right, we will assume he knew nothing about it, but at any rate, there was no trained surveyor with you on that occasion? A. No.

Q. So you were doing the surveying, I suppose?

A. I had ran lines and did surveying, yes. [646]

Q. Was there any discussion while you were up on the Lost Lake property on that day as to the, as to what steps would be necessary to get a title to the 40 acres? A. I know of no discussion.

Q. Were there any discussions regarding income taxes?

(Testimony of Walter Stegmann.)

A. There seemed to be quite some discussion between Mr. Parker and Winans. They would—at different times when I would be surveying and laying out the piece of property, why then, it was not right, and then I would go back and do it over again, and it seemed like the amount of acreage—they were sitting down there on the bridge or having quite a—I don't know, it seemed like it would have been a heated argument there about—their figures didn't agree on the acreage.

Q. By "their figures," you mean Parker's?

A. Parker's and Winans'.

Q. Parker's and Winans' figures?

A. And I didn't have too—hear their conversation because I would pass by them sometimes, and sometimes I would be quite near for a few minutes, and then I would be quite some distance from them.

Q. Well, there were discussions regarding the reserved area, but my present one, did you hear anything regarding income taxes?

A. There might have—yes, I believe there was some. I am [647] sure that at noon when we were eating lunch by the park there may have been some discussion about income tax.

Q. Was there anything said about a claim having been made by Ethel Winans against the Pacific Abstract Title Company because of the condition of the title on the 40 acres?

A. None that I know of.

Q. You didn't hear any about it?

A. No.

(Testimony of Walter Stegmann.)

Q. When did you finally get this survey completed in this reserved area?

A. Regarding what?

Q. The reserved area.

A. You mean at the grounds itself?

Q. Well, when did you—to make a survey I suppose you stake it up and get the measurements, get the metes and bounds? A. Yes.

Q. All right, when did you complete that?

A. I can't remember the exact, the exact day. I mean, it was some time after this, within a few days when this was all taking place, this surveying, the latter part of August.

Q. Well, you didn't finally meet in Vawter Parker's office up there, the lawyer's office, to close this deal or get the deed drawn up, until the 8th of September. Now, had you completed the surveying before the end of August? [648]

A. Well, it was either right at the end of August or possibly the first part of September, but I am sure it was in August.

Q. That you completed it?

A. I am sure it was.

Q. Well, why was there any delay then from the end of August until the 8th of September to execute the deed and close the deal?

A. Well, I was keeping contact with Mr. Winans to find out when I was to see that the lands on this reserved area were described properly in the deed, and it seemed like there always was a delay on his part.

(Testimony of Walter Stegmann.)

Q. At any rate, on Saturday, September 8th, you and Haines and Winans met in Vawter Parker's office in Hood River? A. Yes.

Q. Did Mr. Haines have the description of the reserved area?

A. I can't recall whether—I am sure he had the description of it, and I had some descriptions of it.

Q. The two of you together agreed upon a description? A. Yes.

Q. Did this description of the reserved area, did that involve more than 8.88 acres.

A. At first it was supposed to be about 8.88 acres, and during this survey up there when Mr. Parker and Mr. Winans were up there, there was some discussion about him taking [649] some more area if he wanted it, and they, Mr. Parker and Mr. Winans, I guess, agreed on a price of how much it was going to be or how much he was supposed to take because I was told if he wanted to include this additional acreage, why, go ahead and include it in the reserved area.

Q. Now, my question was, did the reserve area involve more than 8.88 acres as you finally staked it out? A. Yes.

Q. All right, how much more?

A. I believe it was an acre and a half or something like that.

Q. About an acre and a half?

A. I believe it was.

Q. While you were in Mr. Parker's office did

(Testimony of Walter Stegmann.)

you and Mr. Winans and Mr. Parker and Mr. Haines figure out how much was to be paid for that, how much of an allowance was to be made for that acre and a half?

A. Who did you say was there again?

Q. Why, you were there, Vawter Parker was there, Haines was there, Winans was there.

A. Oh, I thought—as I knew that this price had been decided on out on the property between Mr. Parker and Mr. Winans——

Q. All right, then, it is your testimony that there was no discussion there in trying to determine how much the Winans were going to have to allow on the purchase price for this [650] additional acre and a half? A. I don't remember that.

Q. You don't remember. This acre and a half, was that being reserved from the 25-acre tract or the 40-acre tract?

A. Oh, I would have to look at a map to be—I mean, on this reserved area to be exactly sure whether it crossed the line or didn't cross the line.

Q. You don't remember whether it crossed the line into the 40 acres or not? A. No.

Q. Isn't it a fact, Mr. Stegmann, that you there assisted in computing the value of this acre and a half by dividing 25.88 acres in 80,000?

A. Oh, I don't know as I did.

Q. And you arrived at a figure something over \$3,000 and agreed on \$4,750 as the proper charge for one and a half acres?

A. Well, this price had always been agreed, as

(Testimony of Walter Stegmann.)

I knew, between Mr. Parker and Mr. Winans out there when we was staking out this reserved area because we tentatively measured it out.

Q. Did you hear them mention this price of \$4,750?

A. It may have been mentioned. I don't know, I never did hear it. [651]

Q. How did you know how much of a check you had to get back in closing this deal?

A. Well, I didn't get any check back.

Q. You didn't actually handle the money, that is, that was done by Mr. Abraham; was it not?

A. I don't quite understand what——

Q. Did you finally pay the money on the delivery of the deed, or did somebody else do it?

A. Well, I had nothing to do with that.

Q. You did not pay it? A. No.

Q. And you did not get this refund of \$4,750?

A. No.

Q. Were there any discussions in Mr. Parker's office regarding the ownership of the 40 acres?

A. No, not that I heard.

Q. Will you look at this Exhibit No. 311, please? Have you seen that paper before, Mr. Stegmann?

A. Yes.

Q. Where did you see it before?

A. Mr. Ryan, my attorney, showed it to me.

Q. That is the only time you have seen it heretofore? A. Yes.

Q. You did not see that paper in Vawter Parker's office? A. No. [652]

(Testimony of Walter Stegmann.)

Mr. Ryan: Are you asking that this be admitted?

Mr. Krause: No, I am trying to identify it first.

Q. (By Mr. Krause): You did not see that paper in Vawter Parker's office? A. No.

Q. You did not have it in your hands in Vawter Parker's office? A. Well, I am sure I never.

The Court: What exhibit is it?

Mr. Krause: It is 311. We will have to identify it. Mr. Stegmann, isn't it a fact that this paper, Exhibit No. 311, was handed to you in Vawter Parker's office, and you read it over and that you then refused to sign it?

A. Oh, I am sure I never.

Q. All right then, let me ask you whether you read over a paper that in substance said that you agreed that you were taking the title to the 40 acres subject to the rights of the government?

A. No.

Q. There was no such paper handed to you?

A. I am sure there wasn't ever.

Q. Is it a fact, Mr. Stegmann, that you argued with Mr. Winans and Mr. Parker about signing this Exhibit No. 311 and told them it was not needed because you were only getting a quitclaim [653] deed?

A. I am sure I never told them anything like that.

Q. You didn't tell.

A. That was Mr. Vawter Parker.

Q. Vawter Parker? A. Yes.

Q. Didn't you also at that time say that if you

(Testimony of Walter Stegmann.)

signed this paper it was just as much as admitting that you were not getting nothing with respect to that 40 acres?

A. You mean, what was that question again?

Q. Didn't you tell Mr. Parker and Mr. Haines, that is, Mr. Haines was there and Mr. Winans, that if you signed this paper that was handed to you and this—particularly this Exhibit 311, that it would be the same as your admitting that you were not getting nothing with respect to the 40 acres?

A. I am sure I never told them anything about it.

Q. There was no discussion there in Mr. Parker's office regarding the title to the 40 acres?

A. I am sure I never heard any.

Q. There was no discussion there with respect to the rights of the United States to the 40 acres?

A. No.

Q. This is still on this same day, September 8th, Mr. Stegmann, September 8th, while you were in Vawter Parker's office. There was no discussion there at that time with [654] respect to the claim having been made on the Pacific Abstract and Title Company by Ethel Winans? A. No.

Q. All of these matters regarding the claim of the Government to this property, when did they first come to your notice?

A. I can't recall the exact day, but it seems like it might have been, it was quite some time after this, Winans and I had finished setting off the reserved area in this deed.

(Testimony of Walter Stegmann.)

Q. Quite some time after setting forth the reserved area? A. Yes.

Q. Well, was it before this visit to Parker's office?

A. Oh, it was quite some time after September—let me see, when was that, the 10th, it was after that.

Q. After September 10th? A. Yes.

Q. That was after the deed had been delivered and the money paid? A. Yes.

Q. Then you learned for the first time that the United States had some claim on the 40 acres?

A. It must have been in October or November, I thought.

Q. Did you attend any meetings in the offices of the Marsh brothers in McMinnville when Mr. Parker and the [655] representative of the Title and Trust Company were present?

A. I never attended any meetings there.

Q. You never attended any? You are sure it was not earlier than October, at any rate, that you heard about the claim to this property, the claim of the United States?

A. Well, I am not positive of the date now, but it wasn't—it was along about there.

Q. When you gave the \$25,000 check back to Parker it was not because of the fact that you then knew of this claim of the United States?

A. No, when I give back the check in payment for the mortgages I didn't, wasn't—

Q. The fact that this claim of the United States

(Testimony of Walter Stegmann.)

had developed against this 40 acres had nothing to do with your turning the \$25,000 check back to Parker? A. Oh, no.

Q. And there were no discussions about that at that time? A. I don't remember any.

Q. Now, let us see what you did after. On the 8th of September was this day that you were in Vawter Parker's office with Winans, Haines, the surveyor, and Mr. Parker; you recall that, don't you? A. September 8th?

Q. Yes. A. Yes. [656]

Q. Now then, tell us what you did there with respect to getting the deed out and so on.

A. Well, I didn't have anything with getting the deed out. It was only that we had hours of discussion on this reserved area. It seems like, as I already knew I would have to be done, why, everybody else had different ideas how it should be worked in the deed, and we had hours of rewriting and figuring.

Q. The description? A. Yes.

Q. Then Mr. Vawter Parker proposed that you go over, all of you go over to the Title and Trust Company's office because maybe their maps would help you to get this reserved area set out; do you recall that?

A. I don't know as he had proposed that. As I remember, he was going to call up somebody and ask them about it. It seems like it was an insurance company or something, and I says, "Well, I don't care if you call him, but I can't see no point in

(Testimony of Walter Stegmann.)

calling this man. If you want to call somebody, call the County Surveyor and Engineer," because we would need an engineer there trying to set this out.

Q. You furthermore told him not to call on the Title Insurance Company because you would take the description as it was; you were satisfied with it?

A. No, we were not quite satisfied. We had reached an [657] agreement, I think, but I could see no reason of calling. The only person I could see would be a County Engineer or someone who really knew engineering to come in and straighten it out, but he could go ahead and call anyone he wanted to, but I just thought that that was the man he should have got if he was going to get someone.

Q. You told him if he wanted to he could go ahead and consult with the Title and Trust Company to see what they would do about the reserved area?

A. I told him they could consult with anyone, and if he wanted to, to get the County Engineer and someone that knew how to set this out.

Q. This all occurred on that Saturday, didn't it?

A. I am not positive that it occurred on that Saturday and part of Monday. There was two days there that it took, two days to set out this description of the property.

Q. On this Saturday you carried away a copy of this deed, didn't you?

A. I don't think I did.

Q. When did you get a copy of the deed?

(Testimony of Walter Stegmann.)

A. It was on the Monday, and I think the Monday was, as I remember here from a notation, that it was the 10th of September.

Q. On the 10th of September. That is when you think you finally got a copy of the deed? [658]

A. Yes.

Q. What did you do with it?

A. I took it over to Vawter Parker's office.

Q. To Vawter Parker—

A. Oh, excuse me, I am sorry. I took it over to Kenneth Abraham's office.

Q. Had you been to Kenneth Abraham's office before that?

A. No, but I had passed by on the street there. I do, could see where to go to it.

Q. You don't think you did that on Saturday?

A. Well, I am sure it was not on Saturday.

Q. When did you finally sever your connection with the matter? Now, you carried this deed over to Kenneth Abraham's office. You think that was on Monday, the 10th of September? A. Yes.

Q. All right, what did you do then?

A. I walked to Mr. Abraham's office, and as I went in the door Mrs. Parker was there. They have a waiting room, and the office door to his private office is right there together, practically, and I handed it to Mrs. Parker, and I don't know whether Mr. Abraham came out or Mrs. Parker was standing in the door then when she had the paper—of Abraham's office—but I said, to my knowledge, the

(Testimony of Walter Stegmann.)

description is correct as, as it was set out, and on the reserved area, as far as I was concerned I was finished with it. [659]

Q. You told Mrs. Parker that? A. Yes.

Q. What did you do then?

A. I am sure I left them.

Q. Where did you go?

A. I must have went back to The Dalles. I was living there.

Q. Did you come back to Hood River on the following day, Tuesday? A. No.

Q. So your last contact or connection with this deal was on Monday, September 10th, about what hour of the day?

A. Well, it was getting pretty close to, it seems like quitting time because everyone was getting kind of anxious to go home. It must have been 4:30 or 5:00 o'clock, maybe even later, I don't know. It was getting to the point where everyone was getting anxious to go home. It was closing time.

Mr. Krause: Might I, before it slips my mind, offer in evidence Exhibit 308. That is the Election to Purchase.

Mr. Lindsay: It is already in.

Mr. Krause: Well, it is 308, is the agreement to extend the time to set out the reserved area, to set out on August 26th. That is 308.

(Document, Agreement to Extend Time, was marked Defendant's Exhibit 308 for identification.) [660]

(Testimony of Walter Stegmann.)

The Court: It may be admitted.

(Thereupon, the document previously marked Exhibit 308 for identification was received in evidence.)

The Court: Recess until 1:15.

(Noon recess taken.) [661]

January 23, 1953, 1:15 P.M.

WALTER STEGMANN

recalled, testified as follows:

Cross-Examination

(Continued)

By Mr. Krause:

Q. Mr. Stegmann, returning to this meeting in Vawter Parker's office on Saturday, what discussion, if any, had there been regarding the name of the grantee in the deed?

A. Well, it seems like he was wondering whose name was to be put in, Mr. Parker's name or his son. I told him I didn't know whose name was to be put in, whether it was Mr. Parker or his boy or his wife's name would be put in there.

Q. When you say he was wondering, who was wondering, Mr. Stegmann?

A. It seems like Mr. Winans was wondering, but I am not sure. You asked me——

Q. Of course, my question was was there any discussion there regarding the name of the grantee.

(Testimony of Walter Stegmann.)

Now, if somebody is wondering about it, that is not a discussion unless they say something. What discussion was there about the name of the grantee?

A. You mean what was said about it?

Q. That is right, talk. [662]

A. I don't know, but Mr. Parker, Vawter Parker, and Mr. Winans asked if there should be, whose name should be put in the deed, and I said well, I didn't know, Parker himself, his wife or his boy's name or in their business name.

Q. What was their business name?

A. I remember it was Associated Engineers.

Q. How about the Phillips Construction Company?

A. I don't have any recollection of that.

Q. Either Winans or Vawter Parker asked you, I suppose, because you were the only person there that might know, if you did, whether they should put in the name of Chet Parker or his wife's name or his son's name; is that right, or his business name?

A. I imagine there was some discussion.

Q. Well, did you hear it? A. Yes.

Q. Now, didn't you also hear Mr. Parker ask you what name to put in there, whether you wanted your name there?

A. Well, I could see no reason for wanting my name there.

Q. Did he ask you whether he should put your name in? A. No.

Q. Did you tell him that you didn't know

(Testimony of Walter Stegmann.)

whether you would have your name, your wife's name, or your child's name in it, your son's name?

A. I didn't tell him that.

Q. You did not. At any rate, the deed that you carried away [663] from there left the grantee in blank; did it not?

A. I am not sure whether it did or didn't.

Q. You don't know what the deed had on it?

A. Not on—only the description of the property I was sure was right.

Q. Of course, you had been working over this very paper; had you not, that is, you had read it through in order to see what the description was?

A. Well, what portion I read, and particularly was interested in seeing correct, was in a separate paragraph, it seems to see, and I never paid any attention to the rest of it.

Q. The reserved area? A. Yes.

Q. So you don't know whether the grantee's name was filled in when you carried it away or not?

A. I couldn't say.

The Court: Are you referring to the copy?

Mr. Krause: The copy, yes, that is the only one that he——

Q. After the deed was signed did you have hold of the signed deed at all, the one that was signed by Ethel Winans?

A. I don't think I did because—no, I never remember her signature.

Q. All right, now, what discussion took place there between [664] you and Vawter Parker and

(Testimony of Walter Stegmann.)

Winans regarding the manner of payment of the balance due under the option?

A. I don't know whether there was any discussion between myself and them.

Q. That was while still the four of you were there. Mr. Haines was there, too. You don't recall any discussion?

A. I don't recall any of that.

Q. Were you not asked there how you were going to pay for this, pay the balance?

A. No.

Q. You told them that you were going to give them a check drawn by yourself?

A. I don't know as I ever told them anything like that.

Q. Didn't you, and didn't Mr. Parker say that in view of the large amount involved that he could not accept your uncertified check?

A. Well, I remember no such conversation.

Q. You did not, and isn't it a fact that you then agreed that payment should be made by cashier's check?

A. I am sure I never heard any such conversation.

Q. Did you have any conversation with Chet Parker or Lois Parker advising them in what form the money would have to be when the final payment was made.

A. No, I didn't have—I just—they must have knew.

Q. They must have knew? [665]

(Testimony of Walter Stegmann.)

A. The arrangment between Parker and Mr. Winans.

Q. You didn't tell them on—either Mr. Chet Parker or Lois—on that Saturday that Mr. Parker, Vawter Parker, was insisting on a certified check or a cashier's check?

A. I don't even remember seeing—it is possible that I did see her, but I don't ever remember saying anything like that.

Q. Well, you would not have to see either one of them to tell them that. You could have telephoned, couldn't you, but you didn't tell——

The Court: I think he has answered that, he didn't have any conversation. Let us get on.

Q. (By Mr. Krause): You had some discussion with Mr. Winans regarding helping him finance the building of some houses at Dee?

A. Yes, he discussed that.

Q. Did you make any agreement or promise to him that you would finance the building of any of the houses?

A. I don't know as I ever promised him that I would.

Q. Did you discuss it with him in a manner which indicated that you were interested in helping him finance it?

A. Yes, I was interested to look at what he had. It was possible that it was a profitable housing project.

Q. You had the money with which you could have

(Testimony of Walter Stegmann.)

financed some of his building there at that time. didn't you? [666]

A. Well, I had a small amount.

Q. So this thing that is called a house project just consisted of some land that Mr. Winans owned at Dee; did it not? This housing project that he showed you was just a piece of land, wasn't it, with one house built on it?

A. Yes, he had some land there with one house on it he was building.

Q. It was under construction at that time?

A. I don't think it was quite finished.

Q. Mr. Winans wanted to build some more houses on there?

A. Yes, he, that is what he indicated.

Q. Those were houses for workers in the saw-mills close by there; is that what he intended them for?

A. Well, I think that is what he intended them for, anyone who would purchase them.

Q. Did you arrange to have a gentleman by the name of Wardell, come to Hood River in order to look into whether he wanted to help Paul Winans finance that project?

A. Well, I don't remember whether I did or not.

Q. You don't know whether you did or not?

A. Yes.

Q. You knew Wardell at that time, I suppose?

A. Oh, yes, I knew of him.

Q. Was Wardell a man with some considerable

(Testimony of Walter Stegmann.)

means, of considerable means, as far as you [667] knew?

A. Well, as far as I knew, he appeared that way.

Q. However, you don't know whether you brought him up there in order for him to talk to Paul?

A. Well, I never did take him up there.

Q. No not take him up but arrange to have him come up?

A. Well, I don't remember that I ever.

Q. You don't know whether you did?

A. No.

Mr. Krause: You may cross-examine. I am through.

The Court: Mr. Jaureguy is next.

Cross-Examination

By Mr. Jaureguy:

Q. I only have one or two questions here. I think that Mr. Krause asked you about your buying equipment for the Gopher Valley project. Did you buy it for that project, or did you already have it before you got that project?

A. Oh, I had a considerable amount of equipment before I went to Gopher Valley.

Q. Then the next question was whether Parker paid you for showing Weedman some corners on Parker's property, and you said "no." Did Weedman pay you for that?

A. Yes, Weedman Lumber Company paid me for my services there.

(Testimony of Walter Stegmann.)

Mr. Jaureguy: That is all.

The Court: All right, Mr. Ryan. [668]

Cross-Examination

By Mr. Ryan:

Q. Mr. Strayer asked you about a man by the name of Ellis, I believe, who owned a gas station, and whether there was an account owing from you to Mr. Ellis, and involved in that matter there was some truck. Could you explain what happened to that truck?

A. Yes, I am sure I can. I did owe him some money for some gas and probably some parts, and I had been paying him, but he took one of these trucks and held it in his possession for this bill, and the truck was more value than—I had a small mortgage on the truck to Mr. Heider and the mortgage on the price of the truck would be more than enough to pay off this debt.

Q. What happened to the truck; what finally happened to it?

A. Well, as I remember clearly, that I told Mr. Heider where the truck was and what had happened to it.

Q. Then what happened?

A. Well, I don't know.

Q. What happened to the truck?

A. Well, it was still there, as I remember.

Q. Did Mr. Heider—was Mr. Heider ever paid off, or was the truck transferred from your name, or what was the end of that?

(Testimony of Walter Stegmann.)

A. I think the truck was transferred from my name to Mr. [669] Heider. I can't remember that transaction.

Q. That was in satisfaction of the gas bill as well as of your ownership of the truck?

A. Yes.

Q. The mortgage on the truck.

A. Well, when I—I thought it was more than enough to pay off his gas bill.

Q. In other words, you abandoned the truck to Mr. Ellis? A. Yes.

Q. That is what you remember.

This dispute with the Arthurs regarding some logs, how was that finally resolved, Mr. Stegmann?

A. You mean——

Q. How did, how was that finally settled?

A. Well, it seems like, yes, Attorney Frank Marsh and I went down to Mr. Arthur's office.

Q. Who was he representing?

A. Frank Marsh was with me, and Otto Heider was representing Arthur—and what was that other name?

Q. Well, I have Arthur here.

A. The Arthurs and we made a settlement on that as agreed on, and I give him a note, Mr. Heider, to pay off these people.

Q. How much was that note for?

A. I think it was, it was around \$360, \$350. [670]

Q. Do you still owe Mr. Heider for that?

A. I still owe Mr. Heider some on that note.

Q. Do you owe him anything else?

(Testimony of Walter Stegmann.)

A. No.

Q. Over a period of time did you borrow money from Mr. Heider for the purpose of purchasing equipment?

A. I borrowed quite a sum of money over quite a period of time from him.

Q. For the purpose of purchasing equipment?

A. Yes.

Q. Now, there was some question raised here about an Arch. I believe that the information came to Mr. Strayer from the bank records of the Parkers.

Do you remember that transaction?

A. What I remember, it has been quite some time ago, but I did sell an Arch to some people, a man, O. P. Peavey, and I think Mr. Parker financed him or paid me off for the Arch.

Q. Paid you off in behalf of the other man?

A. Yes.

Q. There was some question about a \$200 loan that you were asked to recall. Were you loaned any money out of this transaction?

A. I don't remember, it must have been the other fellows.

Q. Were you or were you not loaned \$200?

A. No, I don't remember. [671]

The Court: What was the answer?

The Witness: No.

Mr. Ryan: He does not remember.

Q. (By Mr. Ryan): At the time you got the cash loan of \$22,000 on November 20, 1950, you gave

(Testimony of Walter Stegmann.)

as collateral a Willamette yarder with a 200 horsepower, is that Cummins diesel engine?

A. Yes.

Q. And also some lines, rigging, parts, and other equipment to be used in yarding logs, and also an Austin-Western road grader. Did you own that property at that time? A. Yes.

Q. You owned it, and did you have some idea of its value at that time in 1950?

A. Well, it was worth well over twenty to \$25,000.

Q. There was a question asked you about where that equipment is today. Would you tell us what happened to the yarder?

A. Well, the yarder, that particular one, I believe a tree—there was a storm there in the fall of 1951, I think, and damaged it, and I had sold off some of the salvage, and the road grader is at my brother's place yet. He has kept it and has been using it, but I still own it.

Q. It is yours? A. Yes.

Q. You still own the grader? [672]

A. Yes.

Q. It is being kept by your brother. Now, the yarder was damaged by a falling tree?

A. Yes, I think there was, yes, a tree that was, damaged the motor and some other things.

Q. Did you dispose of the salvage on the yarder before or after you made payment on that \$22,000 loan to Mr. Parker in September of 1951?

(Testimony of Walter Stegmann.)

A. Well, it would be after that I made the payment to Parker on the loan.

Q. Now, it was discussed here that you still owe a balance of approximately twelve hundred dollars to Mr. Parker on this loan, and you still have possession of that grader. Could you tell us the value of that grader at this time?

A. Well, the value of that grader is in the neighborhood of fifteen hundred dollars, two thousand dollars, which is value enough more than to satisfy it, if I do owe him any balance on the loan.

Q. These two Carco Towing Winches, that is logging equipment, too, I assume? A. Yes.

Q. Those were some of the collateral given on the ten thousand dollar extension, note extension in May 1, 1951. Could you give us the value of those?

A. Well, I would say they were—— [673]

Q. At that time.

A. At that time to replace them would take you well over \$10,000 to have replaced that equipment.

Q. Did you own this in your own name?

A. Yes.

The Court: What was that, an Arch?

Mr. Ryan: No, it is the Carco Towing Winches, two of them.

The Court: Two Carco Towing Winches. Well over \$10,000, did you say?

The Witness: Well, there was one that—as I recollect, there was, instead of a towing winch it was a mistake on it, and it was a double drum rig

(Testimony of Walter Stegmann.)

which was on the back of a cat, which is worth more than your towing winch.

The Court: How old was it, how old was that winch?

The Witness: Well, as I remember, it come with some surplus equipment I purchased right after the war.

The Court: Did you pay a thousand dollars for it?

The Witness: Oh, it was more than a thousand dollars.

The Court: What size of a cat does it fit on?

The Witness: Well, this was a D-7 cat that I bought from the surplus.

Q. (By Mr. Ryan): There was a question asked here with respect to showing Mr. Wardell some timber land in the Pea Vine, belonging to Mr. Parker. Could you tell us of any possible [674] transaction to which that could be referring?

A. I didn't quite understand you that time.

Q. This question asked about showing Mr. Wardell some Pea Vine property that is down in Yamhill County that belonged to the Parkers, could you tell the Court of any transactions which you think you had with Mr. Wardell regarding property during this period?

A. I never did take Mr. Wardell to show him any property that Mr. Parker owned or had. I did take him up to Pea Vine and show him some property that I owned up there and some other property

(Testimony of Walter Stegmann.)

that I did—timber lands I was looking at over at Carlton.

Q. There was a mention of Mr. Hutchins' property.
A. This was up close to——

Q. How did you happen to show him Mr. Hutchins' property, or did you show it to him?

A. I didn't show him Mr. Hutchins' property. It belonged to a real estate man, and I had to purchase that option on it, or, I mean I had paid him a small fee for the timber, and I was planning on buying it, but I didn't buy it, and Mr. Hutchins was a farmer, and he had some money to loan, and he possibly would have bought it, I mean, would have financed, would have possibly bought——

Q. Possibly would have bought the property from you if you [675] had taken up the option?

A. Yes.

Mr. Ryan: That is the extent of my cross-examination.

Redirect Examination

By Mr. Strayer:

Q. Was that the Kennedy property that you showed to Mr. Wardell?

A. I believe it was; that was it.

Q. You paid \$50 for an option on that?

A. Yes.

Q. Did you show Mr. Parker the Johnson property that you bought in May of 1951?

A. No, I didn't, I didn't show it to him. I think I might have mentioned it to him, but he had looked

(Testimony of Walter Stegmann.)

at it for some time before, I think. I am not sure.

Q. He had looked at it with Mr. Walker, a cruiser; had he not, before you bought it?

A. I don't know.

Q. Did you testify the other day to whom you had sold the yarder? I have forgotten.

A. Which yarder was that?

Q. The yarder that you say was mortgaged to Mr. Parker?

A. Well, I had sold parts of it to several different people. [676]

Q. That was the one that was damaged by the tree; was it not? A. Yes.

Q. Do you remember the names of the people that bought it?

A. I couldn't remember the names offhand. There was some—some of it was sold to some junkman, and some rigging was sold to quite a different loggers. I couldn't—

Q. Who did you sell the diesel engine to?

A. I don't remember whether it was a junkman that took that or what it was.

Q. From whom did you buy this grader, the Austin-Western grader?

A. Well, I can't recollect exactly who I bought it from. There was quite a bit of equipment that I had bought, and I just can't remember exact. It might have come from one of the loggers as I was logging, loading out logs for Willamina Lumber.

Q. How old is it now?

A. I couldn't say the exact age.

(Testimony of Walter Stegmann.)

Q. You don't know how many years old it is?

A. No.

Q. Did I understand you to say that you had borrowed \$360 from Mr. Heider to settle with Mrs. Arthur?

A. Well, that is what I know about it, yes.

Q. Was that the same transaction that she had brought suit [677] on against you?

A. That was all settled at that time.

Q. Yes, well now, Mr. Heider was Mrs. Arthur's attorney; was he not, and had brought a suit against you to recover the sum of \$828 that she claimed you owed her? A. I guess he was.

Q. Then you borrowed \$360 from Mr. Heider and paid off Mrs. Arthur on a compromise; is that the idea?

A. Well, it was settled. I mean, that was the figure that was arrived at, and that is what I had to pay.

Q. This White truck that Mr. Ryan asked you about, you said that Mr. Ellis was holding on a bill, he had about \$4,000 due him on a bill; did he not?

A. Well, I don't know the exact amount, but I am sure it was not that large because I had paid him substantial amounts at different times.

Q. Now, you say that the title was in your name with a mortgage to Mr. Heider?

A. Well, I don't know whether it was in my name or not because Mr. Heider was holding the papers on it, and I can't say whether it was registered in my name or not.

(Testimony of Walter Stegmann.)

Q. Had you bought it from Mr. Heider?

A. I bought it from some equipment company in Portland. I can't remember, some tractor outfit.

Q. Well, Mr. Stegmann, I have a certificate from the Secretary [678] of State here on a White Truck which indicates that on November 22, 1948, the title was issued in your name with a mortgage to the First National Bank of Portland for \$3,817.20, and the next transaction appears to be on July 22, 1950. The title was transferred from you to Chet L. Parker, showing the sum to be paid, the registration, the legal owner, and, I believe, the record already shows here that a replevin suit was filed in August of 1950.

Now, don't you remember that transaction of transferring the title over to Mr. Parker?

A. I do not. All I know is I was making payments on trucks to Mr. Heider.

Q. All right, how much did Mr. Weedman pay you for showing him the Cottrell property up in Washington?

A. I couldn't tell you the exact amount.

Q. Approximately?

A. I don't, it wouldn't—I wouldn't know just how much it would be now.

Q. Well, was it a hundred dollars?

A. I think it was more than a hundred dollars, purely from memory though.

Q. For just showing him the corners?

A. Well, I had to make one or two trips up there, it seems like. The snow—at times we didn't get up

(Testimony of Walter Stegmann.)

there, and then we would go up there, and we would have to come back because [679] the weather was so bad that it couldn't be accomplished all in one trip.

Q. How did it happen that you were showing the Weedman Lumber Company Mr. Parker's timber property?

A. Well, I was quite familiar with the corners and lines up around in a considerable amount of that area.

Q. Did Mr. Parker ask you to do it?

A. No.

Q. How did you happen, how did you get in touch with Weedman then?

A. Well, I just don't recall how I did get in touch with him.

Q. When you were over in Hood River at the time this deed was being prepared in Mr. Vawter Parker's office, did you have a copy of that deed or a copy of any draft of deed to anybody besides the one you took over to Mr. Abraham's office?

A. What was that question again?

Q. Did you show a copy of a deed or a draft of a deed that was being prepared in Mr. Vawter Parker's office to anyone else except on that one occasion when you took a copy of the deed over to Mr. Abraham's office?

A. I don't know as I ever showed anyone any copy of that deed. It is possible I may have had some notes of the description of the property.

Q. Did you show any notes or anything of that

(Testimony of Walter Stegmann.)

character to the Parkers, Mr. and Mrs. [680] Parker?

A. I can't recall whether I might have on Saturday or Sunday. I don't know.

Q. You might very well have done so?

A. But I don't remember.

Q. Mr. Bailiff, will you hand the witness Exhibit 29 which is the contract which you made for the sale of different timber to the McCormick Lumber and Manufacturing Company, Mr. Stegmann. I notice that the date is not filled in there. It says the blank day of May. Do you have any way that you can tell about what the actual date of that contract was? A. Well, I don't know——

Q. Let us put it this way. You bought the property on May 14th. About how long after that was it that you made this contract with McCormick?

A. What it was, it must have been within a few days. I mean it was probably a week or so after that.

Q. Who prepared the contract with McCormick Lumber Company?

A. You mean this contract?

Q. Yes, who wrote up that contract?

A. Well, I am not sure whether they wrote it up, McCormick Lumber Company, or my wife may have copied this off of another contract.

Q. Did you have a typewriter at your home?

A. My wife occasionally rented typewriters and was trying to [681] learn typing, and she did a little bit of typing for me.

(Testimony of Walter Stegmann.)

Q. She would rent a typewriter for that purpose?

A. Oh, no, I mean there is different—she would rent a typewriter and maybe type up some contracts, and she would practice on it.

Q. She may have typed this contract at your home; is that your testimony?

A. Yes, it is possible.

Q. Now, I notice there is a witness on that document. Is that Mr. Stanhope? Is he related to you, Mr. Stegmann?

A. Yes.

Q. He is your wife's father; is he not?

A. Yes.

Q. And he works for McCormick Lumber Company?

A. At the time I sold this timber to them he was not working for McCormick Lumber Company.

Q. I see. Now, you had a baby along about the time this Winans transaction was going. Do you recall the date of your baby's birth?

A. That was September 17th, I believe.

Q. September 17th?

A. Yes.

Q. Well, it was August; was it not?

A. Or August 17th.

Q. That birth occurred at the hospital in Newberg, as I [682] recall; did it not?

A. Yes.

Q. Do you recall how long your wife was in the hospital before your baby was born?

A. I don't recall exactly. It seems like she could have went up earlier in the day but I——

Q. That is all I have, your Honor, except I

(Testimony of Walter Stegmann.)

wonder if we may stipulate that the telephone calls that are in evidence here, may we stipulate that—I guess I would have to get those slips to get the numbers from them.

Mr. Buell: 57-A and B.

Mr. Strayer: May it be stipulated with respect to Exhibits 57-A and B that during the months of August, September, 1951, 4984 was the number listed to Mr. Stegmann at his home in McMinnville, and that 4235 at Odell was the number listed to Mr. Paul Winans, and that 4982 was the number listed to Mr. Oscar Parker at McMinnville, and that 41951 at Vancouver was the number listed to Mr. Chet Parker?

Mr. Jaureguy: I take it you have been satisfied by the company that that is correct?

Mr. Strayer: Yes, I understand Mr. Buell subpoenaed the record for those numbers, and that was what was to be——

Mr. Jaureguy: Of course, I am willing to stipulate as far as the Parkers are concerned. I do not know as to the rest. That is perfectly all right, yes, that is all right. [683]

Mr. Strayer: Is that satisfactory to you, gentlemen?

Mr. Krause: Well, Paul Winans' telephone number was not 4235. That was Ethel Winans' telephone. He had no telephone.

Mr. Strayer: I will accept the modification in the stipulation.

Mr. Ryan: May I ask if there are any other Winans' telephone numbers?

Mr. Krause: I suppose there are.

(Testimony of Walter Stegmann.)

(Discussion off the record.)

Mr. Krause: You have Parker's telephone number at Vancouver in the stipulation?

Mr. Strayer: Yes, Mr. Jaureguy has said that that is satisfactory.

Mr. Jaureguy: Yes.

Mr. Strayer: I think the only missing link is whether Mr. Ryan has stipulated now.

Mr. Ryan: 4984, that is the correct number, as I understand it. You had looked it up, as Mr. Stegmann's number?

Mr. Strayer: That is all I have.

Mr. Ryan: That has to be determined whether that is a party line, too.

The Court: The stipulation may be entered.

Mr. Strayer: I think it was a party line; was it not?

The Court: Any further questions? [684]

Mr. Ryan: I might just ask Mr. Stegmann if your number 4984 in McMinnville, was that a party line?

The Witness: Yes, it was a party line.

Q. (By Mr. Ryan): Who was the other party on the line, or who were the other parties on the line, if you know?

A. Well, I know that Oscar Parker was on the same line as my number.

Q. What was his number, 4982 as they said here?

A. As they said here, I believe it was. I am not

(Testimony of Walter Stegmann.)

positive of his number being that, and there was two other people. I am not sure whether it was a House, his name was House, a next-door neighbor. He was on the same line. I am sure that there was another party that was on there. There were four parties on the line, I am sure.

The Court: Is that all?

Q. (By Mr. Ryan): How did they let you know which ring that the party was; was it by rings, so many rings?

The Witness: I don't know any particular rings. It was only one ring.

Mr. Strayer: They have a little different system out there, John, I think a general party line. There was only one ring on each of them.

Examination by The Court

Q. How long had you been borrowing money from Mr. Heider? [685]

A. That goes back quite a ways, your Honor, about, I think, in 1945 or probably before.

Q. Had you borrowed large sums of money from Mr. Heider? A. Quite a large sum of money.

Q. What was the maximum amount you owed Mr. Heider at any one time?

A. Probably in the neighborhood of \$40,000.

Q. What security did you give him?

A. I sometimes gave him a note, and I sometimes gave him a mortgage on equipment I had.

Q. Sometimes he would loan money to you on your unsecured notes; is that right? A. Yes.

(Testimony of Walter Stegmann.)

Q. At the time you were borrowing money from Mr. Chet Parker you were also borrowing money from Mr. Heider; is that correct?

A. I believe I had a few debts to pay yet to him. I mean, there was a small mortgage on——

Q. You owed money to Mr. Heider at that time?

A. Yes.

Q. But you were not getting any more money from Mr. Heider? A. Not at that time.

Q. What interest were you paying Mr. Heider?

A. I don't know just how he figured. It seemed like it was quite steep. I mean, he always—— [686]

Q. Mr. Heider didn't loan you any money at 4 per cent, did he?

A. I think he said it started at six.

Q. Do you mean to say Mr. Heider loans money at 6 per cent?

A. Well, I tried to figure it out at one time, and I didn't come out that way.

Q. Actually, you were paying about 12 per cent to Mr. Heider; were you not?

A. Well, your Honor, I can't say exactly.

Q. Didn't he discount the money to you?

A. He added it all in certain payments, and then so much each money.

Q. So when Mr. Chet Parker wanted 6 per cent you complained about it, and then you got it at 4 per cent; is that right? A. Yes.

The Court: That is all.

Mr. Krause: Now, your Honor, may we call Mr. Linville? I think the attorneys have all agreed that

they would not object to our calling a witness at this time because he is going to be out of the state, as I understood, in a few days, for the next month. [687]

CLYDE W. LINVILLE

was thereupon produced as a witness in behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. Clyde W. Linville.

Q. Where do you live? A. Hood River.

Q. How long have you lived there?

A. Six years.

Q. What business have you been in during that time? A. Real estate broker.

Q. Are you acquainted with the Lost Lake area in Hood River County?

A. Casually, not too well acquainted with it.

Q. You have been up there on Lost Lake, have you? A. Yes, I have.

Q. During the summer of 1951 did you have a customer or client that was interested in buying some property up on Lost Lake? A. I did.

Q. Who was the person?

A. Leon Monchallen from Washington State.

Q. Is he a person who deals in rather large transactions? [688] A. Yes, he does.

Q. What property was he interested in?

A. He was interested in some timber land which

(Testimony of Clyde W. Linville.)

Mr. Winans had some interest in and had discussed with myself and Mr. Monchallen previous to our visit there.

Q. You tell us just what discussions you had with Mr. Winans regarding the sale or purchase of that land.

Mr. Jaureguy: Object to that as hearsay.

The Court: Which land do you refer to?

Mr. Krause: Pardon me just a second. The purpose of this testimony is to show that what we had to sell up there was being considered by another party who knew all about what rights would be sold, who had the money to pay for it, and we want to show the price that he offered us for it, and that bears upon the question as to whether or not there might have been any fraud here because if we had an opportunity to sell exactly the same property for a sum comparable to that sum at which we did sell it to persons knowing exactly what the title was, that shows what the value of the property was and what the value of the interest was that we were selling.

Now, we have been charged here, your Honor, with selling something of no value. That is one of the charges made by the parties here in this case.

Mr. Jaureguy: Well, all he is saying is that the thing [689] that he is trying to prove he considers important, but that does not get away from the fact that he is trying to prove it by hearsay.

The Court: How could he prove it, Mr. Jaureguy?

(Testimony of Clyde W. Linville.)

Mr. Jaureguy: I don't know how he could prove it.

The Court: I was thinking about the same thing. It is hearsay so far as your client is concerned.

Mr. Jaureguy: So far as Mr. Parker is concerned.

Mr. Ryan: And as far as Mr. Stegmann is concerned.

The Court: And he is being charged with fraud by the Title and Trust Company, I understand.

Mr. Krause: That is correct. For that matter, we are also being charged by Mr. Jaureguy's client that we have defrauded him because he says that we sold him something at no value and represented that we owned it. That is exactly the same position that the Title and Trust Company is in, so we are certainly going to be entitled in this case to show the value of the land and the interest that we have in it up there, and there is not any better way of proving that value than a bona fide offer on which a deposit had been tendered, and that is what this is.

Mr. Strayer: I am not making any objection, your Honor, on behalf of the Title and Trust, and perhaps I should not interrupt here, but it does occur to me that it may be relevant on one more thing. As I understand, Mr. Winans [690] claims that he had granted the first option to another party, and he was not free to sell to others until he had offered it to the other party. Now, I understand that refers to this transaction.

(Testimony of Clyde W. Linville.)

The Court: Yes, I know that, but the fact that there may have been a complete divulgence to this other party does not necessarily mean that the Winans completely divulged the condition of the title to the Parkers or to Stegmann.

Mr. Krause: We do not offer it for that purpose at all, your Honor. That is not the purpose of the testimony at all, but we have got to show what we were offering to sell to this gentleman in order to have it comparable to the other transaction.

The Court: Well, I am going to overrule the objection and let the evidence come in, at least so far as the Title and Trust Company is concerned.

Mr. Ryan: We enter the same objection on behalf of the defendant Stegmann.

The Court: You may have exceptions to the ruling. Go ahead.

Mr. Krause: May we have the question, Mr. Reporter?

(Question read.)

The Witness: Do you refer to the tract adjoining Lost Lake and the 40-acre tract back of it or to another tract? [691]

Q. To those two, the one on Lost Lake and the one in back of that tract.

A. Yes, your question is what discussions did we have with Mr. Winans concerning the sale of that property?

Q. That is correct.

A. As previously stated, I think—I think I pre-

(Testimony of Clyde W. Linville.)

viously stated that we went out to see other lands, other timber.

Q. Who is "we" now?

A. Mr. Monchallen, Mr. Winans, and myself, went there to see other land and other timber than that involved in this action. At some time when we were approximately ready to return Mr. Winans made some mention of a tract, of this tract of land which his family had owned for many years and which he apparently attached considerable sentimental value to or attachment to because of it having been held by his father and family through many years, and Mr. Monchallen said, "Could we see it?" He said, "yes, it is not very far from here. It is just a little ways out of the way." So we walked over on to the fractional lot, and Mr. Monchallen became much interested in the quality of the timber and the size of the trees and began converting some of those trees into board feet and said, ask Mr. Winans what he would—if they were interested in selling it, and before—in the course of that conversation Mr. Winans explained that the farmer had owned that fractional lot, the [692] Government lot for many years and had cleared title to it. Then at considerable length he explained the status of the title on the 40 acres immediately in front of the fractional lot and wound up by saying, "I don't really know whether we have anything to sell further than the 25.88 tract," and he also explained that, or revealed that in—I have forgotten the year. I believe it was about 1942, when the title had

(Testimony of Clyde W. Linville.)

passed to his sister, the matter come up of getting title insurance on the tract, and they had secured a title policy on it, and afterward the title company had compromised and paid off on a lesser amount than the amount of the title policy, and wound up by saying, "I don't know whether we have good title to this tract or not. The family had paid taxes on it for many, many years. We have always thought that we could through Congressional action, get good title." He added, "I don't know whether anyone else could do that or not." Do you want me to repeat the conversation?

Q. Well, was there anything said now with respect to selling the property, or was any offer made by Mr. Monchallen for the property?

A. I had Mr. Monchallen aside, and I said, "Are you interested in buying this?" He said, "Oh, yes, I am." And he made some rather quick estimates on the value of the timber on the 25-acre tract, and commented that there were [693] many peeler logs on it, and it was good quality stuff and fairly easy to get out and estimated the footage value on per thousand feet on it on the basis of quality of the standing timber, and I would not recall just exactly how the value of \$80,000, whether he mentioned that as his price on it, but anyhow I asked him, "Would you give \$80,000 for this?" He said, "Yes."

The Court: \$80,000 for what?

The Witnees: \$80,000 for the fractional Government lot and the 40 acres back of it.

The Court: For both of them?

(Testimony of Clyde W. Linville.)

Q. (By Mr. Krause): For both of them, both pieces?

A. For both pieces; that is right. In his reply he stated that there was so much timber at so much per thousand feet on the fractional lot, and he gambled on the 40 acres of questionable title, what would be in what to him seemed to be a rather nominal amount, which was considerable value, however.

Q. Was anything, any agreement made between Winans and Monchallen to sell and buy the property at that time?

A. No, Winans said, "We have not given consideration to selling the tracts. There are interests of all the members of the family involved, and before we would—before I would be able to give you any answer as to whether it is for sale or not, I would have to discuss it with my brothers and [694] sisters." He was rather noncommittal as to whether they would be interested in disposing of it or whether they would sell.

Q. You are referring to Paul Winans?

A. That is right.

Q. You are referring to Paul Winans?

A. Paul Winans, who represented the Winans heirs.

Q. All right, can you tell us about when you were up on the property; what year and about what month?

A. My recollection is that it was some time in June of 1951, approximately that, although I would not be sure within 30 days. It was rather early in the summer.

(Testimony of Clyde W. Linville.)

Q. Were there any further negotiations between Mr. Winans, you, and Monchallen, for the sale of this property?

A. Yes, a number of times Mr. Monchallen and Mr. Winans met in my office, and the three of us discussed the matter. I would say from four to six times or approximately that, quite a number of times.

Q. Just before Mr. Winans gave an option—well, do you know about the option given to Stegmann in this case?

A. I knew of it indirectly. I knew of it through Mr. Winans telling me of the progress of his negotiations with Stegmann.

Q. Prior to the time that you were informed that Mr. Winans had given the option, just immediately prior to that, [695] were there any further negotiations between Monchallen and Winans?

A. Yes, at one meeting Monchallen gave me a check as an earnest money deposit of a thousand dollars, and was interested in having an earnest money agreement made with Winans based on his deposit of that check.

Q. That was at the \$80,000 price?

A. That is right.

Q. Did it involve conveyance of anything other than the right, title, and interest of Winans in the 40 acres?

The Court: Of the 40 acres, are you talking about?

(Testimony of Clyde W. Linville.)

Mr. Krause: In the 40 acres.

The Witness: Let me get the question clear in my mind, please.

Q. (By Mr. Krause): What I wanted to know was when Mr. Monchallen gave you this thousand dollar deposit, what were the terms to be, and what kind of title was to be delivered?

A. He was to give—it was understood that there was good title to the Government lot, and a questionable title to the 40 acres and no responsibility on the part of the sellers to perfect title in the 40 acres.

Q. What was the conclusion of this negotiation between you, Monchallen and Winans?

A. At some point along about the time that the earnest money deposit was given to me, about the time—it might [696] have been before or after—Mr. Winans told us, meaning Monchallen and myself, that he had another party who was showing an interest in the purchase of the property and there were a number of conversations between Mr. Winans and myself, and sometimes Monchallen was present and sometimes he was not, but there were many in which—I think there were quite a number of times in which—the conversation was between Winans and myself, in which it finally came out that he had a tentative offer of \$100,000, I believe the amount is correct, from Stegmann, for the purchase of the property, the indential property, as it was being considered by Mr. Monchallen for purchase.

Q. Were there any discussions as to whether Monchallen would meet that price?

(Testimony of Clyde W. Linville.)

A. Mr. Monchallen told Mr. Winans in my presence that \$80,000 was the top figure at which he would be interested in the property, and Mr. Winans said, "But I do have a commitment of sorts to you. I have an obligation to you, and I feel that you have a right to be considered in this." But Monchallen assured Mr. Winans that if he could get a greater amount than he was offering, it was quite all right with him if he accepted the greater amount and that he should accept the greater amount.

Q. At that time, Mr. Linville, do you know whether or not Mr. Monchallen was financially able to handle the \$80,000 [697] transaction?

A. I think he was, but I never—I don't know what kind of a financial statement he could make. I do happen to know that I sold a ranch for him about the time with approximately a hundred head of cattle on it for \$85,000 I believe the figure was.

Q. Had you handled any other sales or purchases for him during—had you handled any other sales or purchases for him during the period immediately preceding this? A. For Mr. Monchallen?

Q. Yes. A. I had not.

Mr. Krause: You may cross-examine.

Cross-Examination

By Mr. Buell:

Q. Mr. Linville, in the negotiations between Paul Winans and Monchallen which you sat in on, did you consider yourself as the, as acting for Monchallen or Winans or both of them?

(Testimony of Clyde W. Linville.)

A. That is a good question. I never was quite sure of the answer myself.

Q. Did you expect to receive a commission for broker's fee out of the sale if it were completed?

A. I did. [698]

The Court: From whom?

The Witness: From the seller. I had no listing agreement with Mr. Winans, but I think I must have had an understanding with him; however, I would not say positively that I had ever said to him that, "I will charge you so much commission on the sale." But I think that he understood and I understood that I was acting as a broker for him. In a small community such as Hood River where we know our buyers and sellers fairly well, we take many things for granted and I probably not as particular about having signed listings or having written agreements as is common practice in such places as Portland.

Q. Mr. Linville, on the first occasion when you and Paul Winans and Mr. Monchallen were on the Winans' Lost Lake property, how much time did you spend there on the 65 acres?

A. Oh, I would say any place from an hour to two hours.

Q. To your knowledge, did Mr. Monchallen ever examine the property again?

A. As I recall, he and his wife and children went up there on a week end and told me that they stayed overnight and that he spent some time on the property the following day, but never when I was pres-

(Testimony of Clyde W. Linville.)

ent. He didn't make any further examination of the property.

Q. Was there any disclosure as to the fact of the Government's claim of ownership and the loss that the Winans [699] collected under the other policy of title insurance? Was there any discussion of that on any other time other than when you were up there on the property?

A. Yes, I remember distinctly of discussing the matter at one other time when Mrs. Monchallen, who is a practicing attorney or has been a practicing attorney, was present, and Mr. Winans explained to Mr. and Mrs. Monchallen his thoughts in connection with an attempt to clear title on the 40 acres, and Monchallen expressed the opinion that through their acquaintances with one of the members of the Oregon Delegation, and I am not sure which congressman it was, that they would be able to have introduced in Congress a measure to clear the title to the tract if they should acquire it.

Q. Mr. Monchallen was interested in the property, the timber values; was he not?

A. That is right.

Q. Not for recreational? A. Not at all.

Q. Was that Representative Norblad that he was——

A. It could have been. I just remember it was a member of the Oregon Delegation that he had in mind. I think he had some acquaintance, or perhaps might have been a friend.

Q. Do you recall having made any inquiries or

(Testimony of Clyde W. Linville.)

setting in motion any inquiries, Mr. Linville, as to the reliability [700] or financial responsibility of this Mr. Stegmann who was the other prospective purchaser of the Winans' property?

A. Yes, I do.

Q. Can you place that as to date at all as to when——

A. No, I can't. It was some time, I would say it was probably a week or ten days—that is with considerable latitude—before this time, before the date on which the first agreement was signed between Stegmann and Winans.

Q. What is your Hood River telephone number?

A. 3544. That is my office number I suppose you refer to?

Q. Yes. A. That is right.

Q. Was there ever any form of earnest money agreement prepared by you, or did the negotiations get no further than the making out of the check?

A. I think they had—I will change that statement. There had been an understanding arrived at the purchase price, and it had never gotten into a written earnest money agreement, and there was between Monchallen and Winans as to the amount of nothing in the proceedings to bind or to hold Mr. Winans or Mr. Monchallen, either one, to the agreement.

Mr. Krause: I have no further questions.

The Court: Mr. Jaureguy? [701]

(Testimony of Clyde W. Linville.)

Cross-Examination

By Mr. Jaureguy:

Q. You have lived in Hood River about how long? A. About six years.

Q. Then you were not living there in the Spring of 1944?

A. I think I went there in '46, '47, perhaps.

Q. You have a lot of dealings with the title company? A. Yes, I do.

Q. Had you ever heard of this loss that the title company had paid on those 40 acres?

A. I have been asking myself that question. I cannot recall when I first heard of—whether it was in connection with this negotiation of whether I had heard of that before. I am not quite sure when I had, first had knowledge of the thing that you refer to.

Q. In your business as a real estate man, you might have heard about it before you went up there?

A. It is very possible that I did. I am not sure.

Q. I take it, a real estate man would hear of that as soon as the ordinary resident of the city?

A. He might.

Q. But you now do not know whether you knew about that?

A. I would not be able to say definitely when the knowledge of that first came to——

Q. Did Mr. Winans tell you how much the title company paid [702] him and his family?

(Testimony of Clyde W. Linville.)

A. Somebody did. I will not say whether Mr. Winans told me, but I knew something of the details of the transaction, yes.

Q. Then you learned that before you went up there with Mr. Monchallen?

A. Again, I am not not going to let you pin me down to a definite answer on that. I don't remember. I know that now it seems that I had knowledge of it before that time, but I am not sure that I did.

Q. But do I understand now—I am not trying to pin you down to something unawares on your part—I want you to understand that. When you were up on the property looking at it, did Mr. Winans at that time tell you that the title company had paid something on that?

A. He disclosed the whole story of the thing in great detail. I would not say that he gave it to me; he gave it to Monchallen. I was present, and he gave it in detail of all the, from its inception from their acquiring the land and the whole story all the way through. Now, I am not sure whether that portion of it in which they had, in which the title, the previous operators of the title—I think that was the Pacific Abstract Company—had paid off there or not. I am not sure whether that was the first time I had heard of it or not, that is, never from, I mean [703] that he had never told me of the status of that title before, but I am sure that he told it in detail to Monchallen at that time when I was present.

Q. Well, did he tell you that the title, that the

(Testimony of Clyde W. Linville.)

title policy that he obtained at that time was purchased in connection with some sales he was trying to make to the Government?

A. I thought it was an exchange, but I am not sure about that. I believe it was an exchange, and I might be wrong about that.

Q. Yes, you are correct. Can you tell us what he said about that?

A. I believe he said, his remarks was that the Forest Service said, "The Federal government already owns that land. You haven't anything to trade us." I believe that is what he, or about the words that he used in telling of the result of that attempt to exchange that with the Forest Service.

Q. Well, how did the title insurance policy work into that?

A. Well, I am sure I don't know. I know he made——

Q. I mean, what did he say about it; that is what I am asking.

A. Well, that I would not be too particular about, because I was not interested in the title, how it worked out. I paid attention to the final result of it, of the situation.

Q. Did he tell you whether he ordered the title policy after [704] or before the Federal government told him his title was no good?

A. That I wouldn't know.

Q. All right, sir, thank you.

The Court: Mr. Ryan?

Mr. Ryan: No further cross-examination.

(Testimony of Clyde W. Linville.)

The Court: That is all, Mr. Linville. You may be excused.

(Witness excused.)

Mr. Buell: We will call Paul Winans. [705]

PAUL WINANS

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Winans, where do you live with reference to Hood River?

A. Eleven miles southwest.

Q. What is the nearest little community?

A. Small community, Dee, Oregon.

Q. Whereabouts? A. Dee.

Q. Mr. Winans, for the purpose of perhaps clarifying where this property is that we have been discussing here, I will ask the Crier to hand you Exhibit 317, and ask you if that is a rough pictorial sketch of the Hood River Valley; is it not?

A. I am familiar with it.

Q. And is the location of your home indicated on there?

A. Well, very closely to Dee is located where, perhaps a mile north or northeast of Dee.

Q. How far from your place is it up to this par-

(Testimony of Paul Winans.)

particular property on Lost Lake that was sold to the Parkers? [706]

A. Seventeen miles with perhaps another three-quarters of a mile from the lake, the end of the road to the property—rather, from the ranger station to the property.

Q. Among the other defendants in this case are Ross M. Winans. That is your brother, is it not?

A. Correct.

Q. And Ethel Winans, your sister?

A. Yes.

Q. Audubon Winans, your brother?

A. Yes.

Q. And Linnaeus, your brother? A. Yes.

Q. Would you tell us when it was in 1951 that you were first contacted by Walter Stegmann in connection with the proposed sale of this property?

A. I don't have the exact date. It was just a casual thing at the beginning, but I fix the date as nearly as possible on or about July 10, 1951.

Q. Where did that take place?

A. On the highway, near my mail box.

Q. How was Mr. Stegmann attired when he arrived there; what was he dressed in?

A. Well, some portion, some part of that I noticed particularly. He was wearing a large western hat, light-colored hat, and I believe a sort of a blazer jacket, as I remember [707] it. I would not be quite sure about that, and a tight-fitting pair of faded blue overalls, and I believe some kind of cowboy boots, but that I won't be quite specific about.

Q. Did he introduce himself to you by name?

(Testimony of Paul Winans.)

A. He did.

Q. What did he tell you he wanted with you?

A. He said he was looking for Paul Winans.

Q. Had you ever seen him before?

A. Never.

Q. I suppose you acknowledged you were Paul Winans, and then what did he say he wanted?

A. After my acknowledgment he said that he was looking for the Winans who owned some property at Lost Lake.

Q. Go ahead, what was the discussion that followed?

A. I think the next immediate question was—no, his next move was a statement, I think, that he was looking for some place back as far away from people as he could find, a remote, primitive spot, as I remember, and I told him we had a very beautiful situation somewhat like that there on the lake, and he followed up shortly by saying he would like to buy something like that and was it for sale.

Q. What did you tell him about whether or not it was for sale?

A. I did not give him any encouragement. I told him it was an indeterminate matter; that we had not been thinking [708] about selling it for a long time, and that we might not want to sell it at all.

Q. Did you tell him at that time that there were other persons besides yourself who were interested in the property? I mean, who claimed to own an interest in the property?

A. Beg your pardon?

(Testimony of Paul Winans.)

Q. Did you tell him that there were other persons besides yourself who claimed to own an interest in the property?

A. I did, the family property.

The Court: Will you clarify that. I do not know what it means.

The Witness: Specifically, that the whole family were interested in it, that is, brothers and sisters. I won't say that all the brothers and sisters, but I will say that there were several of the brothers and sisters that were interested in the property and that I do not know at this time whether—yes, I will change that—because he asked me about the Winans that owned the property, and I told him Ethel Winans, and, therefore, I did represent her as the actual owner.

Q. (By Mr. Buell): Well, to clear up just that point while we are on it, your father and mother had deeded the property to Ethel in December of 1943; is that correct?

A. That is right. [709]

Q. Your father at that time was sick?

A. He was.

Q. For what purpose was the property conveyed to your sister, Ethel?

A. For convenience in handling it, due to my father's illness.

Q. Anything else? Who was to be the beneficial owner of it after the conveyance to your sister?

A. I don't think that was gone into very deeply, but actually, the first consideration was for the good and the care of my father and mother.

(Testimony of Paul Winans.)

Q. And then what? A. And then what?

Q. I mean, following the—what was she supposed to do with the property, or what was it considered in the Winans family, that she was supposed to do with the property following the death of your father and mother?

A. From then on it would be in my sole discretion what she did with it.

Q. Was that the understanding of all of the brothers and sisters?

A. It was of those who were immediately concerned in the parents' immediate care.

Q. Well, who were the ones who were immediately concerned?

A. Ross M. Winans, my brother, myself, Ethel Winans [710] especially.

Q. What about Audubon and Linnaeus?

A. Oh, I overlooked them. Them, too.

Q. And Mrs. Clara V. Hand?

A. Well, following the others she would be next in line, although she did not live immediately near the folks.

Q. There was no written document setting forth the terms under which your sister Ethel was to hold the property, was there?

A. No, there never was.

Q. Now, going back to this first meeting with Mr. Stegmann, did you direct him as to how he could go up and see the property, in other words, how to find it?

(Testimony of Paul Winans.)

A. No, he didn't ask that question. I don't think it was discussed.

Q. Didn't he tell you that he was going to go up and take a look at it?

A. No, he did not at that time.

Q. How did the first meeting between you end?

A. Pardon?

Q. How did it end? Was there any understanding or agreement between you and Mr. Stegmann as to what he was going to do with reference to the property?

A. He asked for the price on it, or a determination of whether or not we would sell it, and I told him that it [711] would be considered, and we would be glad to let him know.

Q. Did you put a price on it at that time?

A. No.

Q. Was this after Mr. Monchallen had looked at the property on the occasion that Mr. Linville just testified to a few minutes ago?

A. Yes, afterwards.

Q. Had you given Mr. Monchallen a price on the property at the time Mr. Stegmann first came up to see you?

A. No.

Q. During your first discussion with Mr. Stegmann, was the question of the amount or type of or quality of the timber on the property discussed at all?

A. Not at all.

Q. Was there any discussion of logging or the logging industry in that first meeting?

A. Not at all.

(Testimony of Paul Winans.)

Q. Then when was the next time that you saw Mr. Stegmann?

A. I would fix that for a period in there—I want to say that dates are going to have to have a little margin one way or the other. I kept no record, but I would say from three to five days afterwards, Mr. Stegmann called again.

Q. Whereabouts?

A. I think that he called at my home. [712]

Q. Was there anybody else present on the occasion of his second call?

A. My personal family were present.

Q. In the immediate presence of Mr. Stegmann?

A. Well, he called at the house, and I know that they knew that he was there.

Q. Were they in a position to overhear any conversation between you?

A. They might have overheard a little of the early conversation.

Q. What did Mr. Stegmann first say when he arrived on this second visit?

A. Well, that is not so outstanding in my mind, but I do know that he called to find out whether or not I had considered the matter and could let him know what we would do as to the sale.

Q. What did you tell him?

A. I told him I just had not gotten around to it yet.

Q. Did he indicate whether or not he had seen the property by that time?

(Testimony of Paul Winans.)

A. If he indicated anything at that time he indicated that he had not.

Q. Did anything else develop in the course of that second meeting with reference to the property?

A. No, I was not ready to make any commitment. [713]

Q. Was he alone when he arrived at that second meeting? A. He was.

Q. Were any arrangements made for a subsequent meeting?

A. No, I think I just put him off, saying that I just had not got around to it but that we would think it over and decide whether or not we wanted to give him or anyone else consideration.

Q. By the time of that second meeting, had you as yet given any price to Mr. Monchallen?

A. No.

Q. All right, then, when was the next occasion you saw Mr. Stegmann?

A. Oh, I saw him two to three days later on, but running about somewhere between the 15th and 20th of July, 1951.

Q. What were the circumstances of that meeting? I say, what were the circumstances of that meeting?

A. I was thinking. I wanted to keep the sequence correct. If you will give me a little time I will have it that way.

The third meeting was in Hood River.

Q. Whereabouts in Hood River?

(Testimony of Paul Winans.)

A. Approximately at Ninth and Oak Streets, Hood River.

Q. Was that a pre-arranged meeting?

A. It was not.

Q. How did you happen to meet him there, then?

A. Mr. Linville's residence is immediately adjacent to the [714] location I have mentioned. I drove up Oak Street to make a call on Mr. Linville. I parked on the north side of the street opposite Mr. Linville's residence. Mr. Linville's residence is on the south side, and I had scarcely gotten out of the car until Mr. Stegmann's car pulled in behind me and hailed me.

Q. What did he say to you?

A. It was a resumption of his request for an answer with regard to the sale of the Lost Lake property.

Q. What did you say in reply?

A. I told him that—he pressed for an answer on it, and I told him that it would take, that I would give it full and complete attention and would give him some kind of an answer as soon as possible.

Q. Did you indicate that you would have an answer within any specific period of time, such as a week or ten days?

A. No, I made no representation as to that.

Q. Was anything else discussed between you and Mr. Stegmann on that day?

A. Yes, inasmuch as we were getting down to cases on this thing, I made a complete statement of some important factors.

(Testimony of Paul Winans.)

Q. Well, what are the important factors that you made a complete statement of?

A. I recall particularly that I went over once again the matter of the status of the title to the 40-acre tract, the [715] northeast quarter of the northwest quarter of Section 16.

The Court: Tell us what you told him as best you can remember.

The Witness: Let me think one moment, now. Well, in substance, I told him that we did own a title to 65.88 acres—or, rather, the maps and our claim of ownership embraced 65.88 acres, but that 40 acres of that was not in a condition to offer for sale and that we would not offer it for sale; it would not be considered as for sale. This was a reiteration of what I had told him before.

Q. (By Mr. Buell): On which other meeting?

A. Pardon?

Q. On which other meeting?

A. I place that as the second meeting.

Q. Did you do anything further than telling him that you would not consider offering the 40-acre tract?

A. I simply told him that we would give it full and complete consideration and that we would reach a decision on the matter.

Q. Had you by that time told him what the defect in the title to the 40-acre tract was?

A. I did. I had before that.

Q. Had you told him about the issuance of the Pacific Abstract Title Insurance?

A. I had and did at that time. [716]

(Testimony of Paul Winans.)

Q. What about the loss that your sister had collected on the policy?

A. I explained that fully as part of the information I wanted to convey.

Q. Were you going to see Mr. Linville on that particular day with reference to this property, the Lost Lake property?

A. I think it was with reference to that. I had other matters from time to time that I saw Mr. Linville on, but I am quite sure that I was calling and would discuss that matter with him.

Q. When was the next time you saw Mr. Stegmann, following the meeting in front of Mr. Linville's home?

A. At the service station across the highway from my home.

Q. About when was that fourth meeting?

A. To get a little closer there, it was on or about August 1, 1950.

Q. Was Stegmann alone on this occasion?

A. He was alone.

Mr. Jaureguy: He said 1950.

The Court: You mean 1951?

The Witness: Did I say 1951?

The Court: No, you said 1950.

The Witness: Pardon me, it would be 1951.

Q. (By Mr. Buell): Was there anybody else with you when Stegmann arrived? [717]

A. I can't say specifically that there was; therefore, I will say there was not.

(Testimony of Paul Winans.)

Q. What happened at that fourth meeting, on or about August 1st?

A. Well, we reached—I won't say an agreement. We reached an outline of the price we would sell it for.

Q. Who made the first overture? Did you make an offer, or did he make the first offer?

A. Well, all this time he had been making offers, and he was simply waiting for his answer. I never made an offer.

Q. Well, going back a moment then, had he offered any cash figure on either the first, second, or third meetings?

A. No, I am pretty sure he had not.

Q. All right. I take it on this August 1st meeting that actual figures were discussed?

A. That is right.

Q. All right, who made the first offer?

A. He did.

Q. He did? A. Yes.

Q. And what was that?

A. That might need a little clarification, but I will set up—I don't want to take the valuable time of this Court, but to make it clear I imagine that I had better say——

The Court: Just give us the full conversation. That is [718] what we want to know.

The Witness: Well, I would have to refer back to the meeting with Mr. Linville, following when my meeting with Mr. Stegmann broke up at Ninth and Oak Streets, in Hood River.

(Testimony of Paul Winans.)

Q. (By Mr. Buell): All right, go ahead.

A. I immediately went across the street and saw Mr. Linville at his residence, and he, too, all this time, or his client, Mr. Monchallen, was waiting for an answer, and I—we had been unable for one thing, to arrive at a figure that we thought we ought to ask for the property, for the reason that we had been giving it no consideration for a very long time. I did not know what it was worth, and we did not care much whether we sold it or not.

So, I set it up this way to Mr. Linville. We talked about the value price, and I set it up. I said, "About 30 years ago, my father thought that property was worth \$25,000. If that was true then, in this day of the devaluated dollar, perhaps on a ratio of 3 to 1, what would that figure?" There was no comment from Mr. Linville, and no further advance by me at that time. It was just left with no commitment as between ourselves. That set me in the position when Stegmann arrived, and it was what I had told him in this conversation, that I would reach a decision when he asked me again at this fifth meeting at the service station if we had an answer, and I repeated to him the same formula precisely. Then we [719] drifted off of that for a little, some general conversation, and Mr. Stegmann came back after a little bit and said, "You know, that is about what I thought, around seventy-five or eighty thousand for that property." Mind you, we were discussing or would discuss nothing else but the 25.88 acres.

(Testimony of Paul Winans.)

Q. That is what you, at that time, told him at the previous meeting and in front of Mr. Linville?

A. All the way through, both he and Mr. Linville and Mr. Monchallen.

Then I come right square back. I said, "Then you would go \$80,000 for that 25 acres less the reservation." I had already set up that we would require a reservation of some kind for the use of our family. He said unequivocally, "Yes."

Q. What did you say to that?

A. Well, he went a little farther. There had been some discussion about possibly his going to be quite interested perhaps in coming into a housing proposition I had there in which some financing had been mentioned, and at that time he wanted to know how much money I needed. I told him I would like to start with anything from ten thousand up, I think, indicating a top figure of perhaps fifty thousand. He then went on to say—I told him that on this \$80,000 figure that I would first have to go back, as a matter of honor, to Mr. Linville and his clients before I could close [720] with him. Then he advanced a suggestion, "If I could get that deal I would let you have ten thousand on that housing project."

Q. What was the next, was there anything else said at that fourth meeting?

A. Yes, indeed. After a little time he said, "Well, what would you take to include the back 40?"

Q. What did you say to that?

A. I said, "Do you mean that, knowing all about

(Testimony of Paul Winans.)

the condition of that title, that you would want to buy it?"

Q. What did he say? A. "Yes."

Q. Go ahead, what was the rest of the discussion about the 40 acres?

A. Well, I know that I went to a lot more trouble to tell him the whole picture as discouragingly as I could. I simply told him that the condition of the title was not any condition for us to do business with and that it would not be considered, and that was my immediate answer, and then following that, why, the thing was kind of tumbling over in my mind, and I made this statement. I said after he sort of pressed for it, I said, "I will tell you what we will do. We will increase the reservation that we are making out of the 25 acres from the maximum of five acres to 8.88 acres and throw in whatever we have in the way of [721] right to the back 40 for a full hundred thousand dollars," but with the reservation that I would first have to have time to fully consider and reconsider whether or not we would go on it at all and also give him, further, that time to consider whether he wanted it. No commitment as to the back 40, the difference in price, the advance was \$20,000.

Q. Was there anything said at that fourth meeting as to when either one of you would have a definite answer for the other?

A. I told him that I would first have to submit the whole proposition to the prior client. After that

(Testimony of Paul Winans.)

I would be in a position to possibly close with him if the other client did not take it.

Q. Did he say that he would contact you next?

A. I believe that it was set up for about a week to give me time to submit it to Mr. Linville and Mr. Monchallen, and in about a week he would return.

Q. Did anybody else overhear any of those discussions in this fourth meeting that you know of?

A. No, I think I will have to say "no" to that. I know of no one else present.

Q. By the conclusion of this fourth meeting had there still been any discussion of the timber or the value of the property for logging or timber purposes? [722]

A. Pardon, are we talking about the fifth meeting or the fourth?

Q. I think you have only identified the four meetings so far, one on or about the 10th, the second on or about the 14th, and the third in front of Mr. Linville's home sometime between the 15th and the 20th.

A. The third meeting is when—let's see, first is original appearance, second when he arrived and I took him down and I showed him all of the—a lot of my property.

The Court: All of the what?

The Witness: I showed him a lot of my property, not timber. That would be the second meeting. The third he came, and I know that his wife and his child were present. The fourth meeting was the meeting in front of Monchallen's house, and the

(Testimony of Paul Winans.)

fifth is the one where we are getting down to some definite determination.

The Court: Are you thinking of Linville's house and not Monchallen's house?

The Witness: Not Monchallen, Linville's.

Q. (By Mr. Buell): Then to drop back a minute, I don't think we covered the third meeting at all. Was anything in particular at all discussed at the third meeting when Mr. Stegmann's wife and child were along?

A. It was just sort of repeating of the the other elements, and I know my wife and children visited with Mrs. Stegmann [723] while I talked with Mr. Stegmann.

Q. All right then, following this fifth meeting when the figures were first discussed, what did you do next with regard to the property?

A. May I have the preceding questions and answers so I can keep the continuity?

Q. I think I could summarize it.

A. That will be fine.

Q. You had just finished telling us about arriving at a possible contingent figure of \$20,000 to throw in your interest in the back 40, subject to your talking it over with the family and submitting any firm figure that you might reach with Mr. Linville to relay to Mr. Monchallen before you could commit yourself to Stegmann.

A. I believe excepting one incident.

Q. Yes.

(Testimony of Paul Winans.)

A. He had previously stated that he would give a \$10,000 loan for other purposes.

Q. Yes, you have covered that.

A. I then brought that up in saying—in setting this proposition up, and I said then, “You would go for that ten thousand dollar loan?” And I looked him right square in the eye and he said, “Yes,” but his eyes blinked a little.

Q. That was about all that happened at that fifth meeting?

A. I think that just about closed the meeting, so far as [724] we got at that time.

Q. Then did you arrive at any conclusion with the other members of your family as to what kind of a firm proposition you would make first to Monchallen through Linville and second to Stegmann if Monchallen turned you down?

A. Yes, I kept in close touch with what was going on with the immediate members of the family.

Q. How long did it take you before you arrived at some firm figure that everybody was in agreement upon for you to offer?

A. I think after I discussed it with the family it was more or less approved with being left to my judgment as to what was best to do.

Q. Well then, what was the next step that you took after you arrived at the figure that you were going to offer the property at?

A. We were getting down to a deal then, and I had my promise, my commitment to submit it to Mr. Linville and Mr. Monchallen, and I think I quite

(Testimony of Paul Winans.)

immediately went into Hood River, perhaps not that day but quite soon.

Q. Could you give us any approximate time as to that submission of the figure to Linville and Monchallen, the date? A. The date?

Q. Yes.

A. I am quite sure the date was August 3, [725] 1951.

Q. Was Mr. Monchallen present at the time the figure was submitted?

A. He was not present at this call to Mr. Linville. The purpose of that and the arrangement there was to get Mr. Monchallen to come to Hood River and consider the proposition that I had. I know that I outlined the Stegmann proposition to Mr. Linville then.

Q. That is the same proposition that you have just got through telling us about a moment ago?

A. Yes.

Q. Did you tell Mr. Linville then that Monchallen could have the property for a hundred thousand dollars?

A. I told him what the proposition was and that he still held the preference.

Q. And that you were in a position to speak for yourself and the rest of your members of your family in making that offer?

A. Certainly.

Q. Then did you meet with Mr. Monchallen and Mr. Linville personally following that call to Mr. Linville? A. I did.

(Testimony of Paul Winans.)

Q. And outlined the same proposition to them?

A. I did.

Q. What did Mr. Monchallen reply to your offer?

A. Well, in this connection the title status and the [726] insurance adjustment, title insurance adjustment and all that sort of thing were all covered fully, and the fact that there was a question of title there that might not be able to be confirmed definitely, and I know that I included my theory of curing that title, and that Mr. Monchallen seemed to think that my plan was feasible of getting a bill through Congress, a private bill, which, of course, would be enacted into the law and would make our title good. I know he said that—I told him who I was using in the matter, that it was being, would be submitted to Senator Cordon, and he said that he was in close touch with and would use Mr. Norblad if he got it and took it over.

Q. Well, go ahead with your explanation of what happened at that meeting with Monchallen.

A. Monchallen come in, and I don't know whether it was brought out directly, but I do know that he had been at Lost Lake a second trip, and I think he had looked the property over pretty carefully.

Q. Well, now, you cannot testify as to what you think had happened, just what you know about that.

A. I withdraw that statement.

He said after consideration that he would go for \$80,000 for the property with a similar reservation of acreage to the family, that he would want in-

(Testimony of Paul Winans.)

cluded whatever wood in what had been referred to as the back 40 at the price [717] of \$80,000 as that was all he could see in it, and as far as he would go.

Q. Did he make that as a cash offer, or was that to be on time or payments or what?

A. He said that he would make it a firm offer here and now, and he wrote out the check for a thousand dollars as earnest money.

Q. In your presence? A. In my presence.

Q. Who was the check payable to?

A. I think it was payable to the Linville Agency, deposit of earnest money.

Q. Was anything else said?

A. Considerable.

Q. Well, did he tell you that he would not go up, he would not meet the hundred thousand dollar proposition?

A. He did say that \$80,000 was all that he could see in it.

Q. Did you tell him that you were still going to see if you could get a hundred thousand dollars from Stegmann? A. I did.

Q. Then had you by that time set in motion any inquiries about Mr. Stegmann's financial responsibility? A. I had already done so.

Q. Through whom?

A. Oh, I tried an approach through the Credit Association [728] in Hood River. I tried to see if the concern where we sold logs, the Bellford Lumber Company, could get anything on him through a

(Testimony of Paul Winans.)

Dun and Bradstreet report. I read a letter to Mr. Brocker in Portland suggesting, concerning the information that Mr. Stegmann gave me to see if it could be verified, and I had the Hood River Branch of the First National Bank also put an inquiry through the McMinnville Bank, First National Bank of McMinnville, Oregon.

Q. Following the meeting with Mr. Monchallen and Linville when Monchallen made an offer you have just referred to, what was the next time that you next saw Stegmann?

A. I next saw Stegmann the evening of August 10, 1951.

Q. I want to backtrack a minute here.

A. Yes.

Q. I believe it was stipulated here a moment ago that the Odell telephone number 4235 was that of your sister, Ethel; is that correct.

A. That is right.

Q. And what is the Odell number 4384?

A. That is my telephone number.

Q. Do you recall receiving a telephone call from Mr. Stegmann long distance on or about August 6, 1951?

A. I don't want to answer that question entirely. There was so many of them that they are hard to set up. He called many times. [729]

Q. Well, the telephone records of the West Coast Telephone Company that have been received in evidence here show that on August 6 a phone call was placed from the telephone number of Mr. Stegmann in McMinnville to Odell 4984—4384, rather.

(Testimony of Paul Winans.)

A. As I said, there were many, but the best that I could do in attempting to reconstruct that, it was probably him asking if we had——

Mr. Lindsay: Excuse me, that record shows Odell 4235.

Mr. Buell: Am I mistaken on that?

Mr. Lindsay: Is that the one at 7:50 a.m.?

Mr. Buell: Yes—no, I have the wrong slips. May I have the others, please?

(Discussion off the record.)

Mr. Buell: I am sorry, that was a phone call to 4235, your sister's phone.

A. I believe I can explain that. My telephone had not yet been installed at that time, I believe.

Q. (By Mr. Buell): To possibly refresh your recollection a little further, the time of the call was 7:50 o'clock in the morning, and the call lasted three minutes, and this was on August 6.

A. Pretty hard to do anything with that. As I said, there were numerous calls, but my best effort to give you something on that would be it was probably a call from him inquiring [730] whether or not I had made, submitted this proposition to Linville. Now, that is just theory. I don't know, but it is logical.

Q. This August 6 would be a day or two after the meeting which you had with Linville and Monchallen?

A. August 6 would be three days later.

Q. Do you believe that you told Mr. Stegmann

(Testimony of Paul Winans.)

on that occasion the result of your meeting with Monchallen referring to the offer that you had made to Monchallen?

A. If that were the purpose of the call, I would have told him. It is a little difficult there.

Q. That is a little speculative, I think. Go ahead with what happened on the meeting of August 10th of the evening that you have just referred to.

A. Well, in the afternoon of August 10th, by that time much more than the week that he was to appear in person had passed, and we had a firm offer with people that we knew were thoroughly reliable, of \$80,000, and it was the feeling of the family that we should not lose that offer, and I didn't want to let it run along much further. I had waited at least three days past the week period so I went into Hood River and told Mr. Linville to get hold of Mr. Monchallen and we would close it in at \$80,000.

Q. Going back to the meeting you had with Stegmann on the 1st or 2nd of August, when he left there did you tell him [731] that you wanted some kind of a definite answer within any specified time?

A. That I did?

Q. Yes, as to whether or not he would confirm?

A. I think I set a one week limit. I know that I did.

Q. Well then, this meeting on the evening of the 10th, as I recall your deposition, you stated Mr. Stegmann arrived while you were, your family was eating dinner?

A. That is correct.

(Testimony of Paul Winans.)

Q. Following the dinner did you arrive at an agreement on the hundred thousand dollars?

A. That was discussed while I was completing my dinner.

Q. He said at that time, did he, that he would go for the full hundred thousand dollars?

A. He did. He asked me, he asked me if we had reached a conclusion. I told him we had.

Q. Then did you tell him that you would give him an option on it for that price?

A. I did. He first asked me before we went any further how about the back 40 and in the event that the further stipulation as to the conditions he was going to get it in but we had decided that we would.

Q. Then that was the reason for not preparing and signing the option the night of the 10th?

A. I was not in that big a hurry. I had just gotten home, [732] getting pretty late, and it was agreed that he would come back the next morning, and we would—we would execute an option.

Q. Had you prepared any draft of a proposed option at that time?

A. Yes, I did. I went to work on it.

Q. I mean, had you prepared one by the time Stegmann arrived at your place on the evening of the 10th?

A. That is a little—the evening of the 10th, no.

Q. Following Mr. Stegmann's departure that evening of the 10th what did you do with regard to preparing an option?

A. I am not quite sure that I did anything on it

(Testimony of Paul Winans.)

that evening. I might have. I probably began to think it out.

Q. What time did Stegmann come back on the 11th?

A. I kept no notes or records, but I would say reasonably early. By that I would mean maybe eight or nine o'clock.

Q. Did you have the option all ready at the time he arrived?

A. That is a little obscure. I rather think I did though because I recall that this rough draft that I did have made up was written on some of the children's school pad paper.

The Court: Will you step down please.

(Thereupon, a short recess was taken.)

PAUL WINANS

recalled, testified as follows:

By Mr. Buell:

Q. I believe just before we closed, Mr. [733] Winans, you mentioned that you had prepared a rough draft of an option on scratch paper?

A. Yes.

Q. Was that ready for Mr. Stegmann to take a look when he arrived?

A. I may have still been working on it. I do know that he arrived, and I proceeded to set it up on the typewriter, and there was a good deal of talk while I was doing this, interruptions. I made maybe some errors, and then finished the copy of the option in duplicate.

(Testimony of Paul Winans.)

Q. Mr. Winans: I will ask the Clerk to hand you Defendant's Exhibit No. 304 and ask if you can identify that as a rough draft of the option that you had prepared? A. Yes, it is.

Q. Now, that rough draft provides that the payments had to be made, a little as soon as the final draft that was signed by you and Stegmann, doesn't it? A. Yes.

Q. And what were the dates of payment provided for under that rough draft?

A. It says, "A thousand dollars, the receipt of which is hereby acknowledged," at the given date and, pardon me just a moment—

The Court: I think the instrument speaks for itself, doesn't it? [734]

Mr. Buell: All right, we will offer it in evidence.

The Witness: I was just a little slow in picking up the next payment there. I wanted to be sure of myself before I made a statement.

The Court: Any objection to the receipt of the rough draft?

Mr. Jaureguy: I would like to see it again.

Mr. Ryan: I would, too. I don't remember seeing it.

The Witness: I don't believe—oh, yes, here at the bottom we have \$4,000.

Mr. Jaureguy: In so far as the defendant Parkers are concerned, we object to it as not binding on them. We do not say it might not be admissible against others.

Mr. Ryan: Your Honor, I do not object to this

(Testimony of Paul Winans.)

as far as for the purpose of his testimony, but the instrument itself is self-serving.

The Court: Of course, he could testify to it orally. It is merely background information. It may be admitted.

(Document previously marked Defendant's Exhibit 304 for identification was thereupon received in evidence.)

Q. (By Mr. Buell): Was there any discussion or argument between yourself and Mr. Stegmann concerning the proposed terms contained in this rough draft?

A. Yes, he objected to the 3-day option provision. [735]

Q. On any particular grounds?

A. He wanted more time on that. As a matter of fact, it had been my intention to require that he pay \$5,000 down for this option. I decided to be a little easy on him and let him have three days to make the balance of the option money.

Q. Did he say why he wanted more time?

A. He said that was pretty short time, and I don't remember that he gave any specific reason. It might be in order to say that there was some further consideration was not written into the option at all in arriving at the decision to let him have the property.

Q. After the option was signed, were any arrangements made between you and Stegmann as to when you would get started surveying out this reserved area?

(Testimony of Paul Winans.)

A. That is set out in the option as an even date of the exercise of the option.

Q. What I mean, did you not make any appointment with Mr. Stegmann as to when he would get started working out this reserved area?

A. I would say to that "yes" for the reason that we had just one week to do it in so there had to be an understanding, and I was—yes, definitely, I was to get surveyors to do the work of setting out the reservation.

Q. All right then, following the 11th when was the next time [736] you either heard from or saw Mr. Stegmann? A. August 11th?

Q. Yes. A. August 18th.

Q. Had anything been done by that time relative to the survey?

A. Yes, I had taken up the matter of employing surveyors and got no one in Hood River, had to telephone into Portland and get some men out of Portland.

Q. Do you recall receiving any telephone call from Mr. Stegmann on August 17th?

A. No, I can't specifically recall. It was before—there were many telephone calls coming in from Mr. Stegmann, none going out from ourselves to him.

Q. The telephone records show a long distance phone call from Mr. Stegmann's McMinnville number to Odell 4235 at 7:00 o'clock in the morning on the 17th. A. Yes.

Q. Do you remember that telephone call at all?

(Testimony of Paul Winans.)

A. No, not specifically.

Q. You made arrangements for Mr. Haynes to come up to Hood River on the 18th; did you not?

A. The arrangement was made with Mr. Bogar, but Mr. Haynes came with him.

Q. The two of them came on the 18th? [737]

A. That is right.

Q. Mr. Stegmann early of the morning of the 18th, also?

A. At a reasonable time, I believe.

Q. And Bogar, Haynes, and Stegmann and yourself and your brother went on up to the Lost Lake property and started to survey?

A. Bogar, Haynes, my brother, myself, Stegmann, Ray Andrews and his brother, Carl Stegmann.

Q. Referring to the Notice of Election to Purchase which has already been received in evidence here, was that signed and the second \$4,000 payment—rather, the second payment of \$4,000 made before you went up to the survey, or after?

A. No, afterwards for the reason that the provision was that we must set out this reserved area.

Q. How far along did you get on the reserved area on the 18th?

A. Not very far. We run the north line of Lot 1 from the meander corner to the quarter-corner between Sections 9 and 16. We turned south on the west line of which would be the west line of Lot 1 and failed to get as far as reaching what they call Inlet Creek.

Q. Following the completion of the day's work

(Testimony of Paul Winans.)

in surveying, you came on down to your place near Dee, didn't you? A. That is right.

Q. And there you paid off the surveyor's for their day's work? [738] A. Yes.

Q. Did Stegmann stop at your place?

A. At the service station.

Q. At the service station, and he—was the Notice of Election to Purchase prepared at that time or——

A. It was.

Q. Had you shown it to Mr. Stegmann before you had gone up to the survey in the morning?

A. No, I quite distinctly remember that I prepared that paper in its entirety in his presence after returning from Lost Lake.

Q. How many copies did you prepare?

A. At least two.

Q. Then Mr. Stegmann paid you with a \$4,000 check on the First National Bank of McMinnville; is that correct? A. Yes, that is right.

Q. And the Notice of Election to Purchase was signed at that same time, was it?

A. That is right.

Q. Now, the copy of the Notice of Election to Purchase which you retained was signed by Stegmann; was it not? A. That is right.

Q. And also the acknowledgment of the receipt of the Notice and the extension of time for the survey which at the bottom of the instrument was also signed by you and Stegmann and your [739] sister, Ethel? A. Yes.

Q. Was Carl Stegmann there with you at the

(Testimony of Paul Winans.)

time that the Notice of Election to Purchase was prepared and signed?

A. I think he was outside at the service station, but he was—he had not gone away.

Q. It is your recollection that he was not in the service station at the time the check was made out and delivered and the notice signed?

A. I know that he was not in there all the time, and I couldn't say specifically that he was not in there when this check was made out.

Q. All right then, following—or were there any arrangements made as to when you would next meet with Stegmann to continue the survey?

A. Yes, in this acknowledgment of the election I believe that I set that up for an extension to August 26, 1951, one week.

Q. Was an appointment made as to when you would meet and continue the survey?

A. Yes, it was arranged with the surveyors that they would return the next Saturday, or, rather, Friday evening I think they actually arrived.

Q. About what time did Mr. Stegmann leave?

A. A little hard to determine, let me look up a little bit.

Q. That is immaterial. In any event, he and his brother left? [740] A. Yes.

Q. Did they return that night? A. No.

Q. Had you received any telephone calls prior to August 18th from any man or identifying himself over the phone as a Mr. Chet Parker?

(Testimony of Paul Winans.)

A. Definitely no.

Q. Did Mr. Parker, who is sitting here behind Mr. Jaureguy, did he appear at any time during the course of your meeting with Stegmann there in the service station on Lost Lake, on the evening of August 13th? A. He did not.

Q. Or the 18th? A. He did not.

The Court: On the whole day of August 18th. How about at any time August 18th?

The Witness: Not at any time, your Honor.

Q. (By Mr. Buell): Did you hear from Stegmann at any time before the following Saturday, August 25th, that you can specifically recall?

A. I cannot specifically recall. It is logical that I probably did not.

Q. Did you see or receive any telephone calls from Mr. Chet Parker? A. None. [741]

Q. At any time before August 25th?

A. None. None at all.

Q. All right, you already mentioned that the surveyors returned in the evening of August 24th. Did Mr. Stegmann arrive for the survey party the 25th? A. Yes.

Q. All right, tell what occurred in the course of that survey party?

A. We continued to survey around the west and south boundaries of Lot 1. I believe that we didn't complete it altogether the 25th. I think we were—we were spending some time trying to determine just exactly where the south line of the property should be, but around the lunch hour we had com-

(Testimony of Paul Winans.)

pleted that and moved over after lunch to set out the boundaries of the reserved 8.88 acres.

Q. Was that on Saturday or Sunday that you got started on the reserved area? A. Sunday.

Q. Did Stegmann arrive alone on Saturday, the 25th? A. Yes.

Q. Did you have any arguments or disputes between the two of you about the reserved area on Saturday? I am referring to Saturday.

A. Saturday, no, it was not mentioned, I believe, on Saturday or any more, but it was generally understood what [742] we were driving at.

Q. In other words, things went along smoothly but slowly on Saturday? A. That is right.

Q. All right then, on Sunday were the surveyors also present at the survey party? A. Yes.

Q. And Mr. Stegmann alone? A. Yes.

Q. Did any dispute develop on that day about the reserved area?

A. Well, it is a little bit hard to call it a dispute, but when we set out this reserved area I could get no agreement with him as to what we were going to do. He objected that this would not be quite right and fair to him, and that sort of thing. I would not call it a dispute.

Q. Well now, you had contemplated, had you not, that the line dividing the north and south half of Lot 1 would follow along the creek somewhat generally; did you not?

A. Dividing, you mean, as to the reserved area? Pardon me.

(Testimony of Paul Winans.)

Q. Never mind. I will ask a different question.

Did you not intend or contemplate reserving a small tract of approximately one acre at the very north end of Lot 1? [743]

A. That was definitely understood orally when the option was drawn. I didn't go to the trouble to write it in.

Q. Did any argument arise on the 26th about that? A. No.

Q. Well then, what was the trouble that was reached, or what was the trouble between you?

A. So far as I was concerned, there was not any trouble but I could not submit a proposition that Stegmann would agree on. He would not make any of his own that he would go on. He was sullen, stubborn.

Q. Then did you reach or enter into any agreement for other extension of time? A. Yes.

Q. When was that agreed upon?

A. When it was clear with him that we were not getting anywhere that evening I wrote out in pencil a note or agreement for the extension, I believe it is until September 10th, 1951. That was signed by Stegmann and myself.

Q. Now, which of the two of you was it that wanted to hurry up the matter of getting the reserved area staked out? Were you the one that was in a hurry or was Stegmann in a hurry to get it done?

A. Well, for my part, it was part of the deal and had to be done. I wanted to get it done and over

(Testimony of Paul Winans.)

with. For Stegmann's part, he didn't indicate any special hurry at that period. [744]

Q. Now, by the time you and Stegmann parted on Sunday, August 26th, had you at any time heard of Chet Parker's name. Had you heard his name mentioned by Stegmann or anybody else by the time you and Stegmann parted on August 26th, Sunday?

A. No, not by word of mouth.

Q. Had you seen him? A. Never.

Q. Had Stegmann by that time mentioned that anybody besides himself had an interest in the property?

A. No, the title was entirely with Walt Stegmann.

Q. In addition to the agreement of the extension of time to September 10th, were any other plans made between you and Stegmann as to what was going to be done next about working out this description?

A. Well, on the way out after we broke up I called it off a little early for the reason that the surveyors were there on pay, and we were not getting anywhere, so I suppose it was, I think, around 4:00 o'clock, and all the way out walking out on the trail Stegmann sort of advanced the proposition in his usual cagy manner to the effect that whereas these surveyors are getting along so slow would it be all right—he says, “I have a friend who has done some surveying. Would it be all right if I brought him up to finish it?”

(Testimony of Paul Winans.)

Q. Did he mention the friend by name? [745]

A. No.

Q. Did you tell him that that would be all right if he wanted to bring somebody else along?

A. I did with a reservation, I said I didn't like the idea, but I said I guessed that that would be all right provided that his friend's work was satisfactory.

Q. Did he say when he would bring this friend up? A. No.

Q. Or was that left hanging? A. No.

Q. All right then, nothing else developed during the course of that day, did there, that developed into this purchase?

A. No, I think not. We got back and paid off the surveyors, and I think that closed the day.

Q. What was the next step in which Stegmann or the Parkers appeared on the scene?

A. Well, it was confused right there. I am not quite sure as to the dates. I made no record or no notes on the matter, didn't imagine there was going to be any issues come up so I wasn't particularly concerned. So it may be—this was Sunday—pardon me, wait a minute, are we getting ahead of ourselves?

Q. No, it was Sunday, the 26th?

A. That's right, Sunday, the 26th. According to my best [746] records, it was Monday morning, August 27th, that Stegmann came back.

Q. Was there somebody with him?

A. Yes, there was a man and a boy. He introduced the man as Mr. Chet Parker, the engineer,

(Testimony of Paul Winans.)

the surveyor. Now, pardon me, he didn't say engineer. He said his friend, the surveyor.

Q. Where were you at that time?

A. At the service station.

Q. They came into the service station, the three of them? A. They did.

Q. All three?

A. I think the boy remained in the car.

Q. What were you doing at the time?

A. I was endeavoring to work up an enlargement off of a Metsker map with the idea of setting out a plan of the reserved area that would comply with our understanding and be satisfactory to Stegmann and myself and the family, our family.

Q. Was that the first occasion that you had had to ever see Chet Parker or meet him? Was that the first occasion that you had ever had to see or meet Chet Parker? A. That is the first time.

Q. Was anything said about his being a prospective purchaser of the property or the assignee of Mr. Stegmann's option? [747]

A. Definitely not.

Q. What did he say when he came in; what did he say?

A. Stegmann brought him in and represented him as the surveyor, and I was working on this map on the table, and I, of course, proceeded to explain what I was doing and what I thought would be a fair and just way out of the reserved area. Mr. Parker looked at it carefully, I would say, examined it with rather a professional, the interest of a pro-

(Testimony of Paul Winans.)

fessional man, made no comment, as I remember, but he seemed to understand what I was trying to do better than I did.

Q. What did Stegmann have to say besides introducing Parker?

A. I cannot recall any outstanding conversation right there any more than after looking this over for a little while I presumed that the, we were going up to the Lake to complete the survey. I said, "Well, let's get going and get up there," and Stegmann immediately vehemently said, "No, no," he said, "We can do it ourselves," he said, "Mr. Parker with my assistance and the boy's assistance can do all that is necessary to be done."

Q. Did you let them go on up alone then?

A. I didn't like the idea very much, but, after all, I had not made any final commitments so I said, "Okay." I had plenty to do anyway.

Q. They went on up, in any event, they left the station that [748] morning? A. Yes.

Q. Did you see them again that day?

A. No.

Q. Do you know yourself whether they went up to the lake?

A. I couldn't say that they left in the direction of the lake.

Q. All right, when is the next time that you saw either Stegmann or Parker?

A. The contact from Stegmann came quite immediately. I have no exact dates there, but I would say the 28th or 29th Stegmann came back with a

(Testimony of Paul Winans.)

professionally drawn map showing a layout of the property, and I think it was confined to Lot 1.

Q. He came back alone? A. Yes.

Q. Did he leave that map with you?

A. Yes.

Q. Do you still—is that the map, Mr. Lindsay, that you had identified?

Mr. Lindsay: Yes.

Mr. Buell: If you could find it for me, I will go ahead with a few other questions.

Mr. Lindsay: It is 303. It is right here.

(Exhibit presented to witness.)

Q. (By Mr. Buell): You gave the map to Mr. Lindsay; did you not? [749] A. I did.

Q. He has just handed it to us here.

A. Well, let me look at it. I am sure that is right. Yes, I can identify that as the map that Walter Stegmann brought back around August 28th or 29th.

Mr. Buell: All right, we will offer that Exhibit 303 in evidence.

The Court: Any objection?

Mr. Jaureguy: I think it is all right. I would like to take a look at it though.

Q. (By Mr. Buell): What other discussion followed between you and Stegmann the morning that he brought that map up?

A. Well, on that map he showed me that, as it shows there, that he wanted to take in or exactly

(Testimony of Paul Winans.)

approved—that would be better—from the reserved area all of the land in the northeast corner of the property where it was understood, I presume you would say a gentleman's agreement, that the family was to retain up to at least one acre. They said they would have to have that and the land running southwesterly, I can't exactly designate the point, but I think, yes, I think that went 600 feet along the shoreline of the lake, and then I think he indicated that that would turn off and run southerly through a swampy area which would be a reserved area for ourselves.

Q. Did an argument or dispute develop about their failure to [750] include——

A. It came near to being a dispute than anything that occurred during the entire discussion. It definitely violated the understanding we had about the reservation of ground in the northeast portion of the property.

Q. Well, what happened?

A. Well, I took it as an ultimatum. He said he would have to have it that way or we keep, I keep all of Lot 1, 25 acres, and he would take Lot 2 and take 40 only.

Q. Was any definite conclusion or agreement reached?

A. I told him we would not do it, to begin with.

Q. That you would not keep Lot 1 and give him the 40 acres?

A. I didn't like the idea at all. I told him—well, there was a little discussion. I felt him out a little bit there, just exploring only as to what is in the man's mind. He said it would have to be that way

(Testimony of Paul Winans.)

or else, in substance, and we would keep Lot 1, and he would take the back 40. And I said, "At what price?" He said, "\$40,000." And I was simply just exploring, no commitments, and I said it ought to be 50,000 anyway without any idea of closing. I was just exploring, and we stopped there. Then I said, "What do you want, your money back?" I meant the whole deal. He refused any answer. Then he said something to the effect that he would have to have the back 40 anyway, he said, because somebody in there could go in—I am not quite sure, [751] can't quite place it—that if he bought only the front 40 that somebody might come and get possession of Lot 2, the back 40, log it off, and it would ruin his holding so it would have to be included on any kind of a deal. I did not like the idea at all. I told him, I said, "Well, I don't like that. Supposing that we accept your proposition, sell you only this back 40, and you know how bad the title is, and if you never got anything I just wouldn't feel right about making that kind of a deal." Then I was reconsidering, and I conceded. The family and I had thoroughly discussed it, and it had been decided as a fact, which I was not telling Stegmann at that moment, that the family had decided that at that price we could let the whole thing go without any reservation rather than losing the deal.

Q. You told him that you would go ahead and accept the reserved description that is presented in the map that has been presented in evidence?

A. That is right.

(Testimony of Paul Winans.)

Q. What was to be done next? Did you make an appointment to meet him, or what?

A. Well, he said that he and his engineer, Mr. Parker, had been up there and run and traversed the water line, the shoreline to clear across the 40, which if I believe shows on this map—if it doesn't it shows on that they will present later—and [752] that we made an agreement to lay out the reserved area according to that. He would bring Mr. Parker back, and they would set the iron stakes, mark the various corners and angles and so forth.

Q. That appointment was made for August 31, was it?

A. I won't say definitely there was an appointment made, but they were back. I set it as August 30th with a margin or leeway of a day or two one way or the other.

Q. Did they arrive and you start up on the survey party? A. Yes.

Q. There was Mr. Parker and Stegmann and yourself and your brother Ross, Parker's boy Myron?

A. Yes; I didn't know him by name. It is the son.

Q. Now, what was said between you and Mr. Parker during the whole course of the time you were together on that day, whether it was August 30th or 31st, when you were up on the survey party?

A. Well, Stegmann was driving his car, and my brother Ross rode in the front seat with him, and Mr. Parker and I and the son rode in the back

(Testimony of Paul Winans.)

seat, and there was continuous conversation over matters, as I remember it, wholly unrelated to this transaction or the survey on the way up to Lost Lake.

Q. Tell us just all of the conversation that occurred between you and Parker relative to the Lost Lake property on that day?

A. I think, I can't say that there was any specific [753] conversation until we got out onto the job, and Mr. Parker was handling the compass, and I think my brother Ross driving the iron stakes, and Mr. Parker had this instrument which, I believe, is a staff compass, and was taking the bearings and directing the distances or, rather, some of the others were handling the—it was not a log chain; it was perhaps a 100-foot tape. He was giving the bearings, and the others were taking distances to the bearing trees that he directed to be marked, and he was taking the notes of the bearings and——

Q. What were the conversations between you and Mr. Parker about the property, if there were any?

A. That did not come up for quite some time until after we were on the job, and it was started by Mr. Stegmann. He brought it up in this way, sort of an offhand remark or statement. He said, "Well, you have title insurance on this property, don't you, Paul?" I said, "We do, effective on Lot 1 only." I told him that on the title insurance ad-

(Testimony of Paul Winans.)

justment, as I had previously told him many times, it had been written off and that it was effective only on Lot 1, and I think I told him the amount of \$2,000.

Q. All right. Now, just let me interrupt for a moment. While this conversation was going on were you and Parker and Stegmann all standing together?

A. Generally so throughout the day's work. There was some break-up. [754]

Q. No, I am referring to this conversation you are just speaking about when Stegmann said that you have a title insurance policy on this.

A. Definitely so, we had to be together.

Q. That is what I am asking. A. Right.

Q. Now, whereabouts on the property were you?

A. Well, we were on this reserved area line because we did it while we were at work on it. Just the exact point I can't tell you now.

Q. Go ahead with what the conversation was about the property.

A. Well, what it led into was just simply going over all that I had told Stegmann before generally around and including this discussion or explanation of the whole title picture which included the fact that we had had a title insurance adjustment, and I think I went further than that and set up the grounds, as I understood them, for the Government's claim to the property.

Q. You mean the fact that the Government's

(Testimony of Paul Winans.)

survey had never been completed as to the 40-acre tract?

A. Well, further, I knew that I quoted the Supreme Court decision bearing on similar cases.

Q. All right. Did you advise—in the course of that conversation was the fact mentioned that you had written to Attorney Sever, Frank Sever, to attempt to get a private bill through [755] Congress?

A. Definitely, I am sure of that.

Q. You told them at that time, did you, that you had paid all the taxes on the property?

A. I did.

Q. For years and years?

The Court: Where was Mr. Parker standing with reference to where you and Mr. Stegmann were standing?

The Witness: It is a little difficult to say to that, but within very close earshot.

The Court: Did Mr. Parker participate in any of the conversation?

The Witness: Immediately following Stegmann's opening conversation Parker took over, and from there on the whole conversation practically was between myself and Mr. Parker.

The Court: So you were telling Mr. Parker about a defect in the title and explaining what had been done, and Mr. Parker was answering you?

The Witness: I think he sort of led me on. He was very interested.

The Court: Go ahead.

(Testimony of Paul Winans.)

Q. (By Mr. Strayer): Was the purchase of the property by Mr. Stegmann from you discussed between you and Mr. Parker in the course of that conversation?

A. I would say definitely yes. [756]

Q. Was there some conversation about possible tax advantages that you might be able to make if you were to handle the purchase a little differently?

A. Yes, there had been. In the first place, Stegmann I think perhaps upon the second contact we had asked me if I wanted it all in cash and suggested that sometimes people would like to have it split between the two years so that not to have such a heavy tax load, and this was resumed a little later. It was following the title discussion.

Q. Did Mr. Parker discuss this tax question with you? A. He certainly did. He led it.

Q. Did he make any recommendation to you?

A. He did.

Q. What was the recommendation that he made?

A. Well, first, I never had had experience in rendering income tax returns more than our logging operation and personal returns, and he led me into rather deep water that I didn't understand, but I remember that he particularly advanced some plan where the taxes were charged off very materially by, I think, some kind of a capital gain system, but I won't attempt to explain it now. I have explored it a little bit since Mr. Parker talked with me about it, and I am rusty on it at this moment. Then he also strongly advanced the proposition

(Testimony of Paul Winans.)

that we could set up an expense account running over the whole period we had owned the property. He said, "I see where [757] you have done this and that there. You have built trails, have built fire guards, and so on; you have guarded the property, come up here to look after it over all these years, and so on." I was not getting it all as fast as it was being set out, and I finally made the objection, I said, "Yes, but that would be a fictitious proposition." Mr. Parker replied, "Who would there be to say it was fictitious?"

Q. Was there any other discussion about the property other than your giving Mr. Parker a little history of your ownership and the claim of the Government and this tax question?

A. Well, it simply got into——

Q. Now, just a moment. I am referring to any further discussion between you and Mr. Parker.

A. No; and may I have the question about what?

Q. About anything other than the tax matters that you have just mentioned and your giving him a history of the title and your family's ownership of the land?

A. With regard to the transaction?

Q. Yes, with regard——

A. Let's see, the title status, the insurance loss, the tax matters, I don't think anything very material. I know that he brought up and talked considerably about the Fish Commission's dam flooding

(Testimony of Paul Winans.)

part of the property, which is true, and he said that we ought to go down and dynamite it.

The Court: Go down and do what? [758]

The Witness: Dynamite it, your Honor.

Q. (By Mr. Buell): Did you complete the survey of the line of the reserved area on that day?

A. Yes.

Q. Did Mr. Parker stop at your place on the way down, or did he drive right on through?

A. I think that he stopped, got into his own car, and then went away in the direction of Hood River.

Q. Was anything said by Mr. Parker or Mr. Stegmann that day about Mr. Parker being the purchaser of the property and having acquired Mr. Stegmann's option?

A. No, any more than perhaps certain veiled suggestions that Mr. Stegmann had previously advanced about a friend that he might have to let in on the property.

Q. Then when was the next time that you saw Parker?

A. Oh, I think quite immediately following Labor Day. Let's see now; this is two contracts with Parker. Let us keep that straight. There were only three, so the next and only time I saw him in Hood River was, I think, immediately following Labor Day, when he came to see me. He brought a man to see me by the name of Wardell.

Q. Did you have any discussion with Mr. Parker

(Testimony of Paul Winans.)

on this day he arrived with Mr. Wardell about a purchase of the Lost Lake property?

A. No. [759]

Q. It was solely confined to this housing project?

A. That is right.

Q. Just to keep the record straight, that housing project as it has been referred here consisted of two partially-built houses? A. That is right

Q. On some property that you owned not too far from your home, is that right?

A. That is right.

Q. About how long did you see Mr. Parker that day?

A. They were in a terrific hurry, and I would imagine their stay was in a period of one and a half, certainly not to exceed two hours.

Q. Then on Saturday, September 8th, was about the next day that you took any steps with regard to completing this purchase, was it not?

A. Well, there had been a Stegmann call in there in between.

Q. Telephone call? A. No, personal.

Q. With regard to what?

A. Well, he came to press me to get the mortgage that was outstanding on the balance on the property cleared up and the deal closed. He said he had to go away, I think, down to a 22,000-acre stock ranch that he was interested in, in Northern California. [760]

Q. During the course of time before September 8th, why, you got the mortgages cleared up, didn't you? A. Faster than I thought that I could.

(Testimony of Paul Winans.)

Q. And you and Stegmann and Mr. Haynes, the surveyor, met on Saturday, the 8th, to work out the legal description for the reserved acreage?

A. Yes, there had been a telephone call from Stegmann—I distinctly remember that—asking about where I was getting on this mortgage cleared up. I told him it was being settled and possibly we would be able to close it Saturday, September 8th.

Q. All right. Saturday, as I understand it, you met for a while in Vawter Parker's office, and you were also over in the office of the City Engineer in Hood River, working out this description, and had a little trouble arriving at an exact description; correct?

A. Yes, the arrangement had been made to meet Mr. Stegmann in the west end of town and Mr. Haynes at the—or near the City Engineer's office.

Q. Would you tell us what occurred in the course of the discussions which were held in Vawter Parker's office in the presence of Vawter Parker on that day? What was said about the purchase of the property?

A. Well, after getting an agreement on this, I think, computation of the area according to this, the other map—not this [761] map, another map, I think, a little more elaborate—set up so that we were satisfied within reason that we were retaining 8.88 acres, we proceeded then to Vawter Parker's office and proceeded to give Mr. Parker the figures so that the reservation could be described and the deed made.

(Testimony of Paul Winans.)

Q. Was any kind of a draft of the deed prepared on the 8th? A. Yes.

Q. Was Mr. Stegmann given a copy to take away from Vawter Parker's office on the 8th, that you recall? A. Yes.

Q. Was there any discussion as to how payment for the property was to be made?

A. Oh, yes; when we were leaving the lake on that survey Stegmann had submitted to me if I would be willing to take his personal check for the \$95,000 balance remaining. I indicated at that time that the others had gone through, and perhaps it would be all right; however, I got to thinking it over, and I told Vawter Parker when it come to that to tell Stegmann it would have to be a certified check, and Mr. Vawter Parker fully agreed with me, and after the deed, I believe, was prepared and I believe it was presumed to be fully satisfactory that evening of September 8th, when it came to the stipulation that we would have a cashier's check, Stegmann didn't like it very well. However, he said he would have to get—he couldn't get into the bank at Mc-Minnville until Monday [762] to get a certified check. He would be back sometime Monday with it.

Q. Was anything said on the 8th about getting Mr. Stegmann to sign an agreement acknowledging that he was receiving the title to the Lot 2 or the back 40 subject to the claim of the Government, or did that occur on Monday?

A. It is a little hard to say definitely, but it probably was the 8th because the thing was shaping

(Testimony of Paul Winans.)

up to final conclusion on the deal, and it was my purpose to submit that before there was any deed signed.

Q. Was there any discussion on the 8th there about taking the description down to the title company to have it checked at their office?

A. I believe that was the 8th, but it certainly definitely occurred.

Q. Well, what occurred?

A. Mr. Vawter Parker suggested that they take—there was a lot of, oh, failing to get together about, on the description, and Mr. Miller down there is mighty good on descriptions, and Vawter Parker wanted to take it down to get Mr. Miller in on it, I am sure.

Q. Did Mr. Stegmann have anything to say about that?

A. Well, to use a woods expression, he bucked on that. He just wasn't going to have it.

Q. Did he express any reason?

A. No sound reason. He said something that they didn't know [763] anything about it down there, ought to be the County Engineer, to get the County Engineer.

Q. Referring back to that little agreement that you wanted Mr. Stegmann to sign about taking title subject to the claim of the Government, what did he say about that?

A. I submitted it to him for his signature, and he sat and studied it for quite a while and said, "No,

(Testimony of Paul Winans.)

I don't think I could go for that"; he said, "that would be the same as my admitting that I know the title to that 40 acres is no good."

Q. Now, on that particular question about the title not being any good, did you when you had given the history of the title to the property to Mr. Parker when you were up on the survey trip, did you mention to Mr. Parker that the Pacific Abstract & Title Company had suggested that you had committed some kind of a fraud on them in getting your policy of insurance?

A. Yes, I think after he had gone all the way around on this and discussed all those angles I think I made the statement that the title insurance company seemed to be hurt about it and felt that maybe I had swindled them on it, and Mr. Parker instantly came back vehemently and said, "I do not agree." He said, "The fact of your occupying this ground, paying taxes on it for all these years, there could be no better notice to the public than that of your ownership."

Q. Then were any of the drafts of the deed that were prepared [764] on Saturday, the 8th, did any of them contain the name of the grantee in them?

A. Yes, I saw one, I know, that——

Mr. Jaureguy: I object to that as not the best evidence. I mean, so far as Parker is concerned, the objection is made on behalf of Parker.

The Court: Do you have the deed?

Mr. Jaureguy: No, I do not have the deed.

(Testimony of Paul Winans.)

The Court: I mean Mr. Buell. Do you have a copy of that deed about which he is talking?

Mr. Buell: I do not. Do you have it, Mr. Lindsay?

Mr. Lindsay: It is not here.

Mr. Ryan: Not having a copy of the deed, I object on the same basis for Mr. Stegmann.

Mr. Buell: I think probably we would be obliged to either tie this in by showing that it is no longer in existence—but I think that the witness is entitled to answer.

In other words, if it has been destroyed, why, then, we would have the secondary evidence. Otherwise, the draft would have to be produced.

Mr. Jaureguy: That is the same point I was making, that either they have got to show it is not available and why, or they have got to produce it.

The Court: Who prepared the deed?

Mr. Buell: It is my understanding that Vawter Parker [765] did, and also it is unavailable.

Mr. Jaureguy: Well, I object to that, as far as the Parkers are concerned, that it is not in any way binding on them regardless of whether they had the original deed here, the same objection I made to one of the other documents produced here.

Mr. Buell: Well, I will pass it.

The Court: I think I understand the theory of the plaintiff's case is that notice to Stegmann is notice to Parker because they are attempting to prove agency.

(Testimony of Paul Winans.)

Mr. Jaureguy: Yes, I understand that that is their theory.

Mr. Ryan: It has not yet come out here that this purported deed has been shown to Stegmann either.

Mr. Buell: We can pass that and take it up with Attorney Parker when we check with him a little further.

Q. What was the final state of the transaction when you broke up on Saturday, the 8th?

A. Well, I guess I would say that Mr. Stegmann was not very well pleased. He had been urging and pressing that he had to get away to go to a stock show in Salem that he said was more important even than closing this Lost Lake transaction and was pushing us on it for that reason, and he left in somewhat of a huff, I think, with the understanding that we would resume again the following Monday as soon as he returned, as he could get a cashier's check at McMinnville and return. [766]

Q. Had you at any time up to the time they broke up on Saturday, the 8th, heard from anyone that Mr. Chet Parker had or claimed any interest as one of the purchasers of the property?

A. Definitely not.

Q. Did you hear from either Mr. Parker or Stegmann on Sunday, the 9th?

A. I heard from Stegmann, a telephone call.

Q. What did he say?

A. That he had been able to get into the bank at McMinnville and had a \$95,000 cashier's check

(Testimony of Paul Winans.)

and would be on hand first thing Monday morning, that would be the 10th, to complete the transaction.

Q. All right. You met him Monday morning, then? A. Right.

Q. What time?

A. Oh, I cannot fix that exactly. I imagine around 9:00 o'clock, perhaps earlier.

Q. Was Mr. Haynes up there on that day, on Monday, also?

A. No, Haynes had gone back to Portland on Saturday, the 8th.

Q. What did you do all day Monday?

A. Well, it was sort of a nightmare getting everything worked out. I should say that Stegmann had a draft of the metes-and-bounds description on the reserved area from the start. It didn't look very original to me, and I objected to it in the [767] first place the morning of the 8th, and I saw I wasn't getting anywhere with Stegmann about it, and I just let it ride, and we got over to Vawter Parker's office, figuring he would pick it up, and he did. He refused to go for that typewritten description that Stegmann had.

Q. Well, now, wait just a minute. Didn't you tell us that a draft of the proposed description had been prepared on Saturday?

A. No, the map had been agreed on, that is, the boundaries as containing the 8.88 acres, but—and then Stegmann produced, I think, a typewritten description beginning "Save and except," and so on, this reserved area, and he seemed to want and set

(Testimony of Paul Winans.)

up and maintained that nothing but that could be used, and that was what the main delay was over. He would not go for any other description.

Q. By what time Monday had you worked out a description then?

A. I think it was worked out and the deed finally completed quite late Monday evening, the 10th.

Q. Were you present in Vawter Parker's office when Mr. Stegmann took a copy of the deed from the office? A. I was.

Q. Did you see Stegmann again before the transaction was closed?

A. Not again in Hood River. He said he would be back in ten [768] minutes when he left.

Q. Had you heard of anything about Chet Parker was to be the grantee of the deed on Monday, the 10th? A. None at all.

Q. At any time? A. No.

Q. Then, as I understand, it was too late to close the sale on the 10th, and arrangements were made to close it on Tuesday morning, is that right?

A. No, not definitely. As Stegmann was pressing to close that evening and I wanted—I made arrangements that as soon as it would be closed—I saw it was going to run after 5:00 o'clock—to get into the bank as soon as the \$95,000 check was available, to deposit it and draw against it to pay him the \$4,750 for the additional ground that had been reserved.

Q. You did that on Monday?

(Testimony of Paul Winans.)

A. Yes, with the understanding it was going to be closed.

Q. My question was: You did not complete the deal on the evening of the 10th. You made arrangements to come back and meet with Attorney Parker on the morning of the 11th, did you not, Tuesday.

A. Well, that was done by a telephone call which I learned was from Attorney Kenneth Abraham's office.

Q. But Attorney Parker directed you to come back Tuesday and wind it up? [769]

A. That is right.

Q. Your sister Ethel had already signed the deed the afternoon before?

A. After Stegmann went out and said he would return in ten minutes, why, my sister signed the deed. Ethel Winans signed the deed.

Q. When you got back to Attorney Parker's office on the morning of the 11th, Mr. Abraham and Attorney Parker were there waiting for you, is that right?

A. That is right.

Q. You did not see Mrs. Parker while you were there, did you?

A. No, I didn't.

Q. What was said while Mr. Abraham was there?

A. Again, please?

Q. What happened after you got there?

A. Well, the deed, the executed deed was on the table. The \$95,000 cashier's check was on the table, and, if I remember right, Vawter Parker's trust account check for \$4,750 was lying there together with a smaller check, I think, \$105 and some-odd

(Testimony of Paul Winans.)

cents to cover revenue stamps, all there spread on the table, and seeing that Stegman would not sign this paper with regard to the Government claim, I think I have the letter that I proposed to hand him, signed letter, on delivery of the deed. He was not there to give it to, and so I told Abraham to recite the ground and purpose and reason why I wanted—I suggested [770] that once the deed was recorded and the property was out of our hands if they ever expected to get relief through a Congressional act it would be much more difficult to do it in the name of the successor of interest than it would be in the name of the Winans family, and I submitted that possibly it would be better to handle that thing by some kind of a contract for delivery of the deed in order to help Stegmann purchase.

Q. What did Mr. Abraham say to that?

A. He didn't seem to take it very seriously.

Q. What did he say? That is a conclusion.

A. He said, in exact words, as nearly as I can recall, he said, "Paul, from my experience with these people, I don't think they want advice from anybody."

Q. Had you by that time heard of Chet Parker as the purchaser of the property or learned that he was——

A. Not yet.

Q. When was it that you first learned that Chet Parker was the man whose name was inserted as the grantee in the deed?

A. Quite soon. Parker and I sat there discussing the deed which had its rather unusual if not amus-

(Testimony of Paul Winans.)

ing angles, and in a few minutes there was a telephone call which Vawter took down the receiver and had a conversation, and he reached across the desk—I was on the opposite side of the desk—and pulled a copy of the deed that was lying there, a blank copy, [771] over to him, took his pencil, wrote in a name, shoved it back to me with the name Chet L. Parker written in the space for the grantee.

Q. That was the first that you learned of Chet Parker as being the grantee or purchaser of this property? A. That is absolutely true. [772]

* * *

PAUL WINANS

thereupon resumed the stand as a witness in behalf of Plaintiff and Third-Party Plaintiff, and was further examined and testified as follows:

Direct Examination (Continued)

By Mr. Buell:

Q. Mr. Winans, I do not recall whether or not you were asked prior to our last recess in the case whether—or when was the first time that you learned that title insurance had been issued by Title and Trust Company on the property sold to the Parkers?

A. I won't be able to fix the exact date of that, but I do remember the instance very much. I had called at Kenneth Abraham's office on some other matter, and during the course of the conversation

(Testimony of Paul Winans.)

he told me that the title insurance had been issued to Mr. Parker on the Lost Lake property.

Q. Was that after the deed had been placed of record?

A. Yes, I would say probably in the neighborhood of a month after that transaction. I just don't want to try to be exact, and I am quite sure that it was prior to the news story that broke in the Hood River Sun. [777]

Q. At any time during your negotiations with Walter Stegmann, that is, during the entire time period of the negotiations before the option, after the option, up to the time of delivery of the deed, had Mr. Stegmann ever said anything to you about obtaining title insurance on the property that he was supposed to be buying from you?

A. You mean either by myself or by him?

Q. Well, the question was limited to whether or not Mr. Stegmann said anything to you about Mr. Stegmann purchase title insurance.

A. Never.

Q. Did Mr. Stegmann ever mention anything to you about a title insurance report having been issued covering that property during the period of your negotiations with him?

A. He did not at any time.

Q. Now, then, did you ever suggest or mention to Mr. Stegmann that he might be able to obtain a title insurance report or policy?

A. No, I am very sure that I did not.

Q. You already testified that on a number of occasions—or the fact of your prior title insurance

(Testimony of Paul Winans.)

policy with the Pacific Abstract and Title Company had been mentioned to Mr. Stegmann?

A. Will you repeat that? I didn't quite get that question clearly.

Q. I said, you have already testified that during the course [778] of your negotiations the fact of your prior title insurance policy in Ethel Winans' name had been brought to the attention of Mr. Stegmann? A. Oh, yes; I did tell him that.

Q. Now, can you state whether or not at any time during your negotiations you advised Mr. Stegmann that there had been a change in ownership in the title insurance company in Hood River?

A. I can't recall anything like that. There would have been no occasion for it. I would say I did not.

Q. Mr. Winans, could you tell us when it first was that you yourself learned that there was some question as to the title of either your sister or your father or your mother to that 40-acre tract?

A. The only information I ever had on that up to before this sale was what I learned through my father of a tender of refund of the purchase price to the State on the, that 40 acres, and I could place that date as nearly as I could, I believe around 1907.

Q. Was that offer by the State in the form of a written offer or letter, or what?

A. My impression is that it was. I do not ever remember of personally having seen such an offer, but I do know there was a refund draft tendered.

Q. You base your testimony there upon what your father told [779] you, is that correct?

(Testimony of Paul Winans.)

A. I believe that is correct. I don't recall, I just dimly recall seeing the draft. I think I did. Yes, it would be based entirely on what my father told me.

Q. Did your father at that time mention any specific reason that had been given him for the tender of a refund by the State?

A. I remember that it was based on the presumption that no survey had ever been made of the 40 acres.

Q. That, again, is something that your father told you? A. Pardon?

Q. That, again, is something that your father told you, not something that some representative of the State told you; is that correct?

A. On what my father told me. I think this was by mail entirely.

Q. Then were there ever any steps taken that you know of to perfect the title by your father?

A. Nothing further than, I believe, at the time he firmly stated that it was his—stated, I think, to the State—that it was his property, that he had bought it in good faith, and that he intended to keep it. I remember specifically his standing on his grounds.

Q. Did your father at any time, to your knowledge, prior to the transfer of title to your sister or a deed to your sister, [780] ever make any effort or attempt to sell the 40-acre tract?

A. As an integral part of the property as a whole, I am sure that he did.

(Testimony of Paul Winans.)

Q. When did you first begin to take a hand yourself in attempting to make some disposition of the Lost Lake property relative to both the Lot 1 and the 40-acre tract?

A. I was more or less my father's right-hand man even back when this tender was made, and I worked with him from then on, took an active part in whatever he did with regard to sale or development of the Lost Lake property.

Q. Commencing in 1939 you began negotiations with the Forest Service, did you not, for an exchange of land with the Forest Service?

A. Yes, I noted that the file begins in 1939. I believe there were oral discussions from time to time before that.

Q. Then in the course of your negotiations with the Forest Service in 1949 the fact of the possible defect in title was again brought to your attention, was it not?

A. Pardon me. I understood you to say 1949. That was 1939.

Q. 1939, that is right. That was what I had reference to. Wasn't the fact of a possible defect in the title brought to your attention by the Forest Service in 1939 in connection with your negotiations for an exchange? A. Definitely not.

Q. Did the negotiations with the Forest Service for an [781] exchange continue actively from 1939 on for a period of years?

A. I would say that it remained, well, I would

(Testimony of Paul Winans.)

not say actively through that period either because we rejected their efforts through that period.

Q. Then at the least in 1943 or the latter part of 1943 the negotiations for a possible exchange began again, did they not?

A. I think that Mr. Iler of the Forest Service brought it up through a letter along in July of that year.

Q. What was the valuation set on the entire tract by yourself at that time in—

A. That was more or less indeterminate. We thought it had a high potential value, but we did discuss it with the Forest Service, at their suggestion, I believe, at a price of \$6,000. They made a rather definite offer or suggestion of offer at \$6,000.

Q. How much were you attempting to get for it?

A. I am quite certain that I started off with a figure of \$20,000.

Q. Then you ultimately got down to at least as low as ten thousand, didn't you? A. I did.

Q. That exchange was to be for a specified number of thousand board feet of Douglas Fir timber to be cut by you at a certain stumpage price, was it not? [782]

A. No, not at that time. I think the 1943 negotiations were based on cash deal.

Q. In November of 1943 in the course of those negotiations you were advised by the Forest Service that the negotiations for an exchange in so far as the 40-acre tract was concerned would have to be held up

(Testimony of Paul Winans.)

because of a possible defect in title of the 40 acres?

A. I think I should qualify my answer there. The answer is "Yes" but definitely with qualifications.

The Court. Go ahead and tell us what the qualifications are.

The Witness: Yes, your Honor. The Forest Service had never at any time mentioned any suspect or question of flaw in the title, as their correspondence and particularly their letter of September 24th will indicate where they were dealing on an extra 65.88 acres. Following that, in a personal call at the office of the Forest Service in the Terminal Sales Building here in Portland, I myself told them that there was a question of title. Before that they knew nothing about it.

Q. You say you raised the question of a possible defect in title of your own initiative rather than that being brought to your attention first by the Forest Service?

A. Absolutely, that is true. I told them first. They had never raised a question.

Q. At what point was it, then, in those negotiations in the [783] later part of 1943 that the question of title insurance or an abstract on the property was first raised between you and the Forest Service, if it was?

A. That needs a little qualification, also.

The date that there was first a definite discussion with the Forest Service was on December 4, 1943.

(Testimony of Paul Winans.)

However, prior to that I had made some investigation about getting title insurance.

Q. At that same time were you not also thinking about the possibility of using that property as security for a loan from the Farm Loan Bank?

A. A collateral security for an already-existing loan that was in earlier. That came about more or less coincidental, and, I am sure, before the date of October 23rd when I told the Forest Service.

Q. You did not disclose the question of the title insurance—or the title defect—to the bank, did you?

A. I would rather refer to it as a question of title. I did. I made a special trip to The Dalles in respect to the condition of this loan on the farm, and I remember definitely at that time that I told Mr. Victor G. Peterson, the Secretary-Treasurer of the National Farm Loan Association at The Dalles, that there was a question of title to the property.

Q. Would the Crier hand to the witness what has been marked for identification as Exhibit [784] 63-A?

Mr. Lindsay: What is the date of that letter?

Mr. Buell: That is a letter of the United States Forest Service to Paul Winans dated November 6, and a letter of Mr. Winans to the Forest Service dated November 22, 1943.

Q. Now, Mr. Winans, following the receipt of that letter from the Forest Service and your reply to it with regard to the possible title question, had you decided in your family to have the title transferred from your father to your sister, Ethel, was it not?

(Testimony of Paul Winans.)

A. I think that came several weeks later.

Q. It was all in the course of these same negotiations for a possible exchange of timber with the Forest Service?

A. You mean that decision to have it transferred?

Q. Yes. A. No.

Q. You say that the decision to have the title transferred to your sister did not arise out of the negotiations with the Forest Service for an exchange of timber?

A. I am certain it did not, except to this extent, when it did, was arrived at it was to relieve my father who was critically ill at the time of worry and burden and passing title.

Q. Did your father know at that particular time that you had been carrying on these negotiations with the Forest Service?

A. He certainly did.

Q. Then what was the reason for a transfer of title to your [785] sister?

A. Because of my father's condition, his illness. I would say that my father suffered a stroke which from its inception along in October of that year rendered him entirely bedfast, but at the same time it seemed to step up his mentality, always a brilliant mentality. If anything, it stepped up his grasp of affairs.

Q. Was there any written document or memorandum or anything in writing whatsoever covering the terms or conditions of this so-called trust under

(Testimony of Paul Winans.)

which your sister Ethel was to hold the title to that property?

A. No, there was no other written document or condition.

Q. Was that transfer to your sister Ethel made before or after you had first consulted Mr. F. M. Deneffe, an attorney in Portland, in connection with the title to the Lost Lake property?

A. It might have been talked about, but no decision was arrived at until afterward.

Q. Had you discussed the question of a possible issuance of title insurance with the Hood River Abstract and Title Company before you had title transferred to your sister?

A. Yes, in November, November 20, 1943.

Q. What was that discussion—first of all, was it with Mrs. Sinclair? A. Yes. [786]

Q. What was the discussion?

A. At that time it was merely a matter of exploration of possibilities.

Q. Did you tell her there was a question, or possible question, as to your title to the 40 acres?

A. No, I did not.

Q. Then what was the discussion that you just referred to of possibilities? What possibilities do you mean?

A. Well, to give a true picture of that, it perhaps would be a little lengthy; however, I do know that in November, that very same day that I had been at the office of the County Clerk in Hood River and was looking up the chain of title myself, and

(Testimony of Paul Winans.)

that I was referred from there to the Hood River Abstract Company to furnish some information that the County Clerk did not have and thought that Mrs. Sinclair might have.

Q. What was the information that they thought that she might have?

A. Well, I wanted at the courthouse to see the connecting link in the chain of title from the United States Government to the State of Oregon, and they had nothing and could throw no light on how or where to get it nor why.

Q. Then what did you find out as a result of your inquiry at the title office?

A. Mrs. Sinclair could throw no more light on it than they did at the courthouse. [787]

Q. So then what did you do?

A. I asked Mrs. Sinclair how in that case, then, did the legal authorities, the attorneys, clear a title in the instance of a mortgage that we had placed on the property, how did they clear it as between the United States Government and the State of Oregon. Mrs. Sinclair replied, "Oh, the lawyers understand that," or words to that effect.

Q. Was the question of title insurance to the property discussed at that time?

A. I didn't—I think on that date I am quite sure Mrs. Sinclair solicited that matter to sell me title insurance. I might say that at that time I was contemplating having an abstract which we had furnished in connection with the home loan to Mr. Frank Hilton, attorney, in 1923, which would take

(Testimony of Paul Winans.)

very little work to complete, and that was what I had in mind.

Q. You say that she suggested that you get title insurance instead of a continuation of the abstract?

A. Very definitely so.

Q. Then following the conveyance to your sister the application was made for the title insurance policy from Mrs. Sinclair, is that correct?

A. No, before the transfer of title to my sister December 21, 1943, I am quite sure.

Q. That was when the application was made?

A. Yes, I think I ordered a report at that [788] time.

Q. That was before the deed to your sister was recorded?

A. I could get tangled up on that, but in my mind the deed was not executed until around December 30th. I had not referred to the date lately, but I believe that to be correct.

Q. I think that is correct. I think it is admitted.

Mr. Jaureguy: It is stipulated. Pardon me.

(Discussion off the record.)

Mr. Buell: The stipulation shows that the deed was dated December 29 and recorded December 30th.

Mr. Jaureguy: 1943.

The Witness: Well, that answers the question. It was after I had ordered a title report.

The Court: I have some doubt as to the relevancy of much of this testimony. I wonder if you could shorten it.

(Testimony of Paul Winans.)

Mr. Buell: I shall endeavor to, your Honor.

The Court: Is it your contention now that Mr. Winans has perpetrated a fraud on the title insurance company, Pacific Abstract and Title Company, and therefore, because he did it then he is likely to do it now?

Mr. Buell: No, that is not the theory of this line of questioning, your Honor. The purpose of it is to bring out specifically the, not only the complete knowledge of Mr. Winans as to the state of the title and the investigation that he had made of it, but also to show or to accentuate the proposition of the predicament that he would be in in the face of previously [789] existing records as a result of this Pacific Abstract and Title Company deal if he were to attempt to sell a marketable title to some third party without a disclosure of the previously existing defects in it.

The Court: Well, the testimony was that he did disclose. I think we can just assume that.

Mr. Buell: There is also testimony that he didn't, and I think his predicament, if the fact developed that he actually didn't, has probative value as bordering on the credibility of the witness, but I am about to complete this, your Honor.

The Court: You do not have to convince me that a man who has not title to a property before he attempts to sell is in a pretty bad way.

Mr. Buell: I did not follow you. I do not understand that.

(Testimony of Paul Winans.)

The Court: I do not need to be convinced that a man who attempts to sell property that has a defect or that he does not hold title to is not in a difficult position, ordinarily.

Mr. Buell: In any event, Mr. Winans, you never pointed out to the Hood River Abstract and Title Company or the Pacific Abstract and Title Company which issued the policy this possible question of a defect of the title until after the policy had been issued, is that correct?

A. I would say that practically I did, because the purpose of my trip to investigate there I pointed out right there where [790] the possible question of title lay.

Q. But that was the extent of your pointing out?

A. Yes.

Q. A possible flaw?

A. That was the extent.

Q. The question of survey was not mentioned?

A. No.

Q. Mr. Winans, your family had paid all of the taxes up until the time of your transfer to your sister and continued, following the settlement of your claim with Pacific Abstract and Title Company, paying all the taxes on both the Government Lot 1 and the 40-acre tract?

A. That is true. There was a period in there in which some of the taxes were paid by the mortgagee, in which he was subsequently reimbursed.

Q. Now, why was it that you continued to pay those taxes on the 40-acre tract after you had settled

(Testimony of Paul Winans.)

your claim against the Pacific Abstract and Title Company?

A. Our position in the settlement with the insurance company remained exactly as it had been all the time. There was no change, and we never surrendered our right, our claim of right to ownership of that property at any time before that or since until the sale of the property to Mr. Parker—Stegmann, rather—Mr. Parker, eventually. That is where the deed, to whom the deed was made anyway.

Q. Did you continue or claim an interest in the 40-acre [791] tract after the settlement of your claim with Pacific Abstract and Title Company?

A. Certainly; the entire family, myself and the family, felt that our position remained exactly the same. We were not surrendering, and I think the file will show that we told the Forest Service that after they rejected the offer.

Q. You felt that you still owned the property or that you just had some contingent interest that might be perfected in it?

A. I would say that we had an equity, at any rate, in the property.

Q. You then, following the Pacific Abstract and Title Company settlement, you retained the services of an attorney to attempt to perfect your title by a special Act of Congress, did you not?

A. That is right, Mr. Sever.

Q. You were advised by him, were you not, that

(Testimony of Paul Winans.)

the only way in which the title could be cured was by a special Act of Congress?

A. No, I would not say that. We employed him to accomplish the confirmation of title in us by that means.

Q. Well, you never learned of any other possible way in which the title could have been perfected, did you?

A. It is my theory and I think based on local custom——

Q. Just wait a minute, now. I will rephrase my question, [792] and then answer it, if you will, and make your explanation.

Did you ever learn from any attorney or any other person any other specific way in which you might perfect your title to the property other than by an Act of Congress?

A. I think through the courts we did by permission of the, securing permission of the United States Government to bring suit to quiet title.

Q. Was that before or after this Pacific Abstract and Title settlement?

A. Definitely before, long before, and I think the matter was brought up in discussion with Counsel.

The Court: It was some time prior to 1944, then?

The Witness: Oh, yes, your Honor.

Q. (By Mr. Buell): Going back to the property itself for a moment, Mr. Winans, what, if anything, had you or any of the members of your family ever done with reference to making any improvements

(Testimony of Paul Winans.)

upon or doing anything on the 40-acre tract? Do you understand what I mean?

A. I think I do, and I would like to refer that as before the Stegmann deal. In 1922 we, I think, surveyed a portion of the property with the purpose of putting it on the market for sale in some homesites.

Q. Let me interrupt for a moment. Wasn't that survey limited only to Government Lot 1?

A. At that time it covered only, for the property on Lot 1, [793] but it was contemplated that when the time come that there might be more call for homesites it would be enlarged to carry on to Lot 2 or the 40 acres.

Q. But what specifically was done, actually physically done on the property by you or any of the members of your family?

A. There had been campsites cleared from time to time, some trails opened up, a boat built and kept on the lake for the family use and moored on this property, and specifically about the time of this grounds survey there was a water filing. The head works was on the 40 acres, and we did start a dam there, filed a notice.

Q. That is, was that sometime in the 'twenties?

A. Yes, I would say offhand around 1922.

Q. That consisted of filing your water rights on that particular inlet creek?

A. That is right.

Q. And building a small dam located on the 40-acre tract?

A. That is true.

(Testimony of Paul Winans.)

Q. The campsites that you mentioned just a moment ago, they were all located on the 25-acre tract, were they not?

A. All but one, the one in which myself and an assistant set up when we were building this head works for the water appropriation.

Q. Following the completion of that, the building of that head works, you never used that campsite again, did you? [794]

A. Not that I recall.

Q. And the campsite itself just consisted of a little clearing where you could pitch a tent, something of that nature? A. That was it.

Q. But no buildings were ever built on the 40-acre tract? A. No.

Q. And no roads or trails were built through the 40-acre tract?

A. Well, a trail was opened up through the property to this head works.

Mr. Buell: That completes the direct examination of Mr. Winans, if the Court please.

The plaintiff would like to offer at this time Exhibit 63-A which was identified by the witness.

Exhibit No. 64, a letter dated January 10, from the Mt. Hood National Forest to Mr. Winans.

A letter from Paul Winans to Pacific Abstract and Title Company dated January 13th, Exhibit 65.

A letter from the Forest Service to Mr. Winans dated January 28, 1944, Exhibit 66.

Letter from Paul Winans to Forest Service dated February 5, 1944, Exhibit 67.

(Testimony of Paul Winans.)

Letter of Paul Winans to Pacific Abstract and Title Company dated February 9, 1944, Exhibit 68.

Letter of Ethel Winans to Pacific Abstract and Title [795] Company dated March 3, 1944, Exhibit 70.

Letter of the State of Oregon Land Board to Frederick M. DeNeffe, dated February 23, 1944, Exhibit 69.

I had one additional question, your Honor, which will be short.

Would you hand the witness Exhibit 70, please.

Q. Now, Mr. Winans, that is a photostatic copy of a letter from your sister to Pacific Abstract and Title Company in connection with the settlement of your claim against that company. Was that letter written by yourself for her signature, or was it written by Miss Winans?

A. Let me examine one moment.

Mr. Lindsay: Which letter is this?

Mr. Buell: The letter of Ethel Winans to Pacific Abstract and Title.

Mr. Lindsay: Hasn't that been stipulated, that that was written by DeNeffe for Ethel Winans' signature?

Mr. Buell: I don't believe it had been so stipulated.

The Court: It has been so stipulated?

Mr. Buell: I do not believe it has been stipulated as to that.

The Court: What Exhibit number?

(Testimony of Paul Winans.)

Mr. Buell: Exhibit No. 70, your Honor.

Mr. Lindsay: Paragraph 13 of the stipulation says that by letter dated March 3, 1944, drafted by F. M. DeNeffe and [796] signed by the defendant Ethel Winans the claim was made against Pacific Abstract and Title.

Mr. Buell: I am sorry. I did not understand that. I have no further questions.

The Court: All right. It may be admitted. All of them are admitted, there being no objection to any of them.

(The documents previously mentioned and having been identified as plaintiff's Exhibits 63-A, 64, 65, 66, 67, 68, 69, and 70, were thereupon received in evidence.)

The Court: We will take a recess.

(Recess taken.)

Cross-Examination

By Mr. Jaureguy:

Q. Now, Mr. Winans, as I understand it, on December 21, 1943, you applied to the title company for title insurance?

A. That is the date that I fix.

Q. On December 29th your father executed a deed conveying this property to your sister?

A. Yes.

Q. On December 30th the same year that deed was recorded?

(Testimony of Paul Winans.)

A. Yes, I am sure that is correct.

Q. That is the same date as the date of the title insurance policy that was issued? [797]

A. I think that also is correct.

Q. On January 6th next, six days later, seven days later, you made a written offer to the Government to sell this property to the Government for \$8,000?

A. Yes.

Q. On January 10th that offer was rejected?

A. Yes.

Q. Because of the title? A. Yes.

Q. Was that the first letter you had gotten from the Government after the conveyance from your father to your sister?

A. To my sister?

Q. Yes. A. I believe so.

Q. Then on January 13th, 14 days after the title policy, you notified the title company of this alleged claim?

A. Yes.

Q. At any time during your negotiations with the title company did you call the title company's attention to this prior correspondence you had had with the Government prior to the time that you ordered a title policy?

A. No, not farther than possibly it might have been mentioned that we were contemplating a sale. I think it was.

Q. I am speaking now of the correspondence from the Government that told you that the Government claimed the property. [798]

A. I made no mention of that factor.

Q. But, as I understand it from your testimony

(Testimony of Paul Winans.)

this morning, prior to the time you ordered a title policy it was you that called the Government's attention to the defect and not the Government that called it to your attention?

A. I am very certain of that.

Q. Now, you recall your testimony that you gave on deposition on August 20 and 21, 1952?

A. Yes.

Q. I want to call your attention to some of that testimony on Pages 44 and 45. I will summarize it by stating that you testified at that time of the tender by the state in 1907 to your father.

A. I assume that is correct. I am not looking at the deposition.

Q. Then following that I want to ask you whether or not these questions were asked and these answers given.

A. Yes.

Q. Well, you don't say yes until I read them because maybe you do not agree.

A. Well, I am just acknowledging your statement.

The Court: Do we have copies of those depositions?

(Deposition was presented to the witness.)

The Witness: 44 and 45?

Mr. Jaureguy: Yes; now we are on page 45 about two-thirds [799] of the way down on page 45.

A. Yes, sir.

Q. "Q. So you and your father knew of that connection at that time?

(Testimony of Paul Winans.)

“A. Yes, but my father refused it right here and now.”

A. Is this page 45?

Q. Page 45 of your deposition about two-thirds of the way down:

“Q. So you and your father knew of that contention at that time?”

Let me know when you have found it.

A. I am sorry. You have given me Mr. Parker's deposition. It does not read that way.

(Another volume presented to the witness.)

The Witness: Yes; this is Paul Winans, yes, Mr. Jaureguy.

Q. (By Mr. Jaureguy): “Q. So you and your father knew of that contention at that time?”

“A. Yes, but my father refused it right here and now.”

The Witness: Let me get oriented.

Q. Yes. Shall I start again? A. Yes.

Q. “Q. So you and your father knew of that contention at that time?”

A. May I ask what contention are you referring to? [800]

Q. “A. Yes, but”——

The contention of the Government, that is what that is referring to, you see.

A. All right. I think we can go.

“A. Yes, but my father refused it right here and now.” A. Yes.

(Testimony of Paul Winans.)

Q. "Q. Yet, following that letter and the refusal of your father to comply with it, you say no steps were taken to find out whether or not there was any merit in the contention?" A. Yes, sir.

"A. Not that I can recall or that I ever knew of.

"Q. When was the next occasion that anything was said about that?

"A. The next time it came up was when the Forest Service rejected the offer to sell on the ground that the United States Government owned or claimed to own the Northeast of the Northwest of 16." A. This letter is what I had in mind.

Q. Then after that testimony that I have just referred to, if you will notice in the deposition there was a short recess, and then when we resumed Mr. Buell who had been questioning you before resumed questioning as follows:

"Q. Can you state positively whether or not any [801] representative of the Forest Service verbally told you that the United States claimed title to the 40-acre tract before title was transferred to your sister? A. Positively not."

A. Yes.

Q. That was your testimony, was it not?

A. That was.

Q. Do you still say that that is the fact?

A. I would like to qualify slightly.

Q. All right. Do so.

A. At that time I stated, at all times, that this was a long time back and that I had not had opportunity to refer to any record and it would have

(Testimony of Paul Winans.)

to be subject to correction. However, I still stand on "Positively not."

Q. That is, that you state positively that no representative of the Forest Service verbally told you that the United States Government claimed title to the 40-acre tract before title was transferred to your sister?

A. Yes, that was my contention then and now.

Q. And it was not even discussed with the Forest Service? A. I didn't say that.

Q. Well, explain that. Was it discussed with the Forest Service?

A. Yes, after I had first opened the matter up and told them [802] of the question of title, definitely, but in this there was never a notice of any kind. It was sort of a nebulous thing that might or might not be, and that was the basis of their letters that I can foresee that you are going to refer to.

Q. I am glad you foresee it. So that it was you that called the attention of the Forest Service to it and not the Forest Service calling it to your attention?

A. That is right. At that time I could not have said so, but all this opens up the thing, and I have referred to files and refreshed my memory, and that is my testimony.

Q. If you would just as soon, I would like to have you turn to page 241. A. 241?

Q. Yes. A. Yes, sir.

(Testimony of Paul Winans.)

Q. You will recall, will you, that this was the next day, the next morning?

A. That is correct.

Q. I was questioning you here.

A. I remember.

Q. Now, we will start at the fifth line on 241.

A. Yes.

Q. "Q. At the time you applied for title insurance back in 1943, I think you said it was——

"A. Yes. [803]

"Q. ——you knew then that a claim had been made by the Government that it owned this property?

"A. No, the Government had never made such a claim.

"Q. You did not know that?

"A. Well, wait a minute. I think it had been slightly discussed, but, as far as making a formal claim, no.

"Q. Discussed with whom?

"A. Oh, I believe it came up in a discussion with Mr. Cook.

"Q. Who is Mr. Cook?

"A. He was then a land agent or something of that kind for the Mt. Hood National Forest.

"Q. How long before you applied for your title policy had this been discussed with Mr. Cook?

"A. I couldn't tell you now exactly; possibly a period of two or three months or something like that."

Q. You so testified, did you not?

A. Yes.

(Testimony of Paul Winans.)

Q. So he did tell you about it, did he not?

A. No, he did not.

Q. Well, I mean, did you mean to testify that he told you about it?

A. No, I meant to testify only that there had been some discussion. [804]

Q. Then your testimony goes as follows:

“Q. Could it have been as recently as ten days before you applied for the title insurance?

“A. There may have been some references to it at that time.

“Q. Now, I mean the first reference to it; could it have been as recently as ten days?

“A. I believe it was prior to that.

“Q. You believe it was prior to that. Would you say, then, that no reference was made to it until ten days before you applied for your title policy?

“A. I would not be able to say that.

“Q. What did he say about the claim of the Government?

“A. That is hazy in my mind. I believe it was discussed, though, that it came up. Subject to correction, I believe it did.

“Q. Did he explain the Government claim on account of lack of a survey?

“A. It might have been. I can't tell you what the discussion was. That was eight years ago, anyway, and I don't remember.

“Q. Over nine years ago?

“A. Naturally it would have to be that some such reference was made, I presume.

(Testimony of Paul Winans.)

“Q. Was that just one conversation, or was there [805] more than one?

“A. Again, I would not want to bind myself, but in all likelihood I would say that it was on more than one contact.

“Q. You say probably the first time he mentioned it to you was not as late as ten days before you applied for the title policy?

“A. That would be my over-all estimate at this time, yes.”

Q. You still say that you mentioned it to him, and he didn't mention it to you?

A. Let me myself re-read the last question. I was turning the page and didn't quite follow.

Yes, that was my testimony.

Q. Do you mean to say that you intended to testify at that time that you are the one that mentioned to him, and he didn't mention it to you?

A. No, I did not so intend because, as I said, all this was hazy in my mind and was subject to correction.

Q. “Q. Would you have discussed it with him as many as four times?”

A. Pardon me just one moment.

Q. I am at the top of 243.

A. Thank you. [806]

“A. Well, that is a difficult thing to say. My impression is there were several meetings and it might have been brought up at these discussions we had.

“Q. What is your recollection as to whether any-

(Testimony of Paul Winans.)

body was present when you were having the discussions with him?

“A. That would be an indeterminate matter at this time.

“Q. In other words, you don’t recall?

“A. No, I don’t recall.

“Q. I will ask you whether or not you have any recollection as to whether you discussed it with anybody else in the employ of the Government besides Mr. Cook?

“A. Discussed about this claim of title?

“Q. Yes. A. I recall of no one.

“Q. After you learned of this claim of title and before you applied for title insurance, did you seek the advice of any person as to whether or not the Government’s claim might have some merit to it?

“A. I think I did.

“Q. Would you tell us whether that was a lawyer?

“A. I think that was Attorney Frederick M. DeNeffe. [807]

“Q. I am talking now about before you applied for the title policy. A. Yes.

“Q. Did you discuss with members of your family whether it would be desirable, in view of the Government’s claim, to get a title policy to the property?

“A. I believe I did. We generally conferred and kept each other advised in that respect.

(Testimony of Paul Winans.)

“Q. Could you tell us which members of your family discussed the question of whether you should get a title policy?

“A. Probably my brothers and possibly my sister.

“Q. And would you tell us whether the decision to get a title policy was your own decision or whether they all joined in that decision?

“A. In the first analysis, it was my decision.

“Q. Your decision? A. Yes, right.

Q. “Q. Did anyone suggest you should not get a title policy? A. I think not.

“Q. So is it a fair statement, then, it was your decision and they acquiesced in it?

“A. Definitely so. [808]

“Q. Therefore, as a result of what Mr. Cook had told you, together with conferences with members of your family, you decided to get a title policy?”

Well, this answer, I will read it if you want me to. It has nothing to do with it. It is a little colloquy between three of us there.

You so testified, did you not?

A. Yes. You misread one answer there that I made. In about the middle of Page 244 you read, “In the first analysis.” I have it here, “In the final analysis.”

Q. In the final analysis it was your decision?

A. That is correct.

Q. You have made answers to these questions as I have read them? A. Pardon?

(Testimony of Paul Winans.)

Q. You answered these questions as I have read them, and with the correction?

A. Yes, this is the record, as I remember it. I don't see any need for any corrections there.

Q. Then if you will turn to 251. A. Yes.

Q. We are discussing there your conversation with Mrs. Sinclair, and finally, I think, it is Mr. Lindsay was questioning you, and then toward the bottom I interrupted. [809]

Q. (By Mr. Jaureguy): "Q. Did you tell her what Mr. Cook had said about the Government's claim? A. No.

"Q. You did not discuss that with her at all?

"A. No.

"Q. I am not saying this to be offensive, understand. A. Right.

"Q. I hope you will understand that, but did you think you were defrauding the Title Company under those circumstances?

"A. No, sir; I didn't. They are in the title business. I am not. It would not do me any good to go in there and say, 'Here is a good title. Insure it,' no more than going to say, 'Here is something wrong; don't insure it.' They are supposed to know.

"Q. They are supposed to know?

"A. Aren't they? Or do they?"

Q. That was also your testimony, was it?

A. Pardon?

Q. That was also your testimony? A. Yes.

Q. You must have read some of the decisions.

A. Pardon?

(Testimony of Paul Winans.)

Q. You must have read some of the decisions I handed to the [810] Court on that question.

The Court: What is the purpose of this interrogation, Mr. Jaureguy?

Mr. Jaureguy: Well, my purpose is because it is inconsistent with the testimony he gave on direct examination, that is, all except this last half-page, and I think that when a person testified one way that we have a right to show that at a prior time he testified otherwise.

The Court: I appreciate that.

Mr. Jaureguy: Particularly on cross-examination.

Mr. Krause: I would like to have you point out just how it was inconsistent. It was not as full as the testimony he gave here, but, as far as I can see, nothing inconsistent.

The Court: You will have an opportunity to argue that later.

Q. (By Mr. Jaureguy): Now, before you testified on deposition you had listened to the testimony on deposition of Mr. and Mrs. Parker and Mr. Stegmann; that is correct, is it not?

A. Mr. Stegmann but not Mr. and Mrs. Parker at all.

Q. You had read their depositions?

A. I had read Mr. Parker's, not Mrs. Parker's.

Q. So you had heard their testimony and you had seen the exhibits that had been marked?

A. I would not say as to the exhibits. I know

(Testimony of Paul Winans.)

there was some referred to. I had heard or read those two depositions, [811]

Mr. Jaureguy. I would like to offer in evidence Exhibit 103, which is a telegram from Mr. Winans to Mr. Parker. Everybody has seen it. I want to first offer it in evidence.

The Court: Is there any objection?

Mr. Buell: No objection.

The Court: It may be admitted.

(Telegram dated November 22, 1951, to Chet L. Parker, Vancouver, Washington, having been previously identified as Defendant's Exhibit 103, was received in evidence.)

Q. (By Mr. Jaureguy): On November 22, 1951, you sent Mr. Parker a telegram, did you not?

A. Yes, I believe, I think that is the right date. I did send him a telegram.

Q. It is Defendant's Exhibit 103 and reads as follows:

"Chet L. Parker, 302 East 7th Street, Vancouver, Washington. Can you contact me Congress Hotel, Portland, tomorrow 1:30 p.m. to 3:00 p.m. Re statement believe mutual interest best served through primary conference with you. Paul Winans."

That is the telegram you sent to Mr. Parker?

A. Yes, I recall that.

The Court: What is the date of that telegram?

Mr. Jaureguy: November 22, 1951. [812]

The Court: That was after the action was filed?

Mr. Buell: I believe so.

(Testimony of Paul Winans.)

Mr. Jaureguy: I do not know.

The Witness: If I may say, prior.

Q. (By Mr. Jaureguy): What was the statement "Re statement believe mutual interest best served through primary conference with you"? What were you referring to then?

A. There were a lot of factors, Mr. Jaureguy, building up before that that would take some time to explain. However, after this publicity came about through the breaking of this matter in the Hood River Sun, I and the family felt that we were being put at a disadvantage through this publicity through false statements, and we wanted to do something to correct it in the public mind. It was causing a lot of interested gossip and discomfort of mind to our people so I figured that I would do something about it, and before doing that, from what I had read in the paper, I thought it might involve perhaps also Mr. Parker with whom, so far as I knew, my relations were friendly, and I thought it was only fair to give him a chance to do something about it before I issued a statement.

Q. That was the mutual interest that you thought would be served through a primary conference? A. I thought it could be.

Q. Did you know about the threatened lawsuit or a lawsuit at that time? [813] A. Pardon?

Q. Did you know about this lawsuit or this threatened lawsuit at that time?

A. It is possible at that time that there had been

(Testimony of Paul Winans.)

a reference to it. I believe it was in the press, but that would be all that I would know about it.

Q. But you did not intend to talk with him about a lawsuit?

A. I couldn't say that. Perhaps I intended to give him a chance to talk about anything he might wish.

Q. What did you want to talk to him about?

A. I wanted to let him know that we were contemplating issuing this statement, if that would be of any interest to him, and I said there is a lot of other factors. Shall I go into them?

Q. I want to know what you intended to talk to him about?

A. Well, as a matter of fact, first Stegmann had made a representation to me, a promise, an explicit promise on another deal, some financing and——

Q. Are you talking about the housing deal now?

A. Yes.

Q. You wanted to talk to Mr. Parker about that?

A. Pardon?

Q. You wanted to talk to Mr. Parker about that?

A. I wanted to see what he might, what his position might be. [814]

Q. That is to serve your mutual interest?

A. That was what I had in mind.

Q. All right. What else did you want to talk to him about? A. I believe that is about all.

Q. Did you also send a telegram to Mr. Stegmann?

A. I say no, I don't recall of any such, and I am certain I did not.

(Testimony of Paul Winans.)

Q. Well, why not?

A. Because that, perhaps because that is the reason for this telegram. Stegmann had made these representations, that is, that he would make a loan up to \$10,000, his own proposition, if he got the deal. Secondly, he had represented that he had a man that was interested in the building business, from California, that he thought would go into it in a much larger way. Mr. Parker had brought this man up to contact me, a fellow by the name of Paul Wardell, and Wardell talked rather extensively about what he would do and rather definitely, and at the time of the closing of the deal, at the time of the closing of the Lost Lake transaction on September 11th, I again specifically asked Stegmann, "What about this financing?" I will revert back a little bit. I was at the point of having a mortgage made up to submit to him at the same time he laid down a deed to the property. but I passed that up and asked him about the financing, and he said that Wardell, he was sure that Wardell was going to go into it and could do so [815] much more for me that he thought that we should wait on Wardell to get into the matter, but, if he did not, that he, Stegmann, still would make the \$10,000 loan. He said to wait two or three more days for Wardell to appear, and if he didn't show up in that time to call him, Stegmann, at McMinnville, and he would make the \$10,000 loan.

Now, following that, I had no other contacts with these men. I just expected that we might have had, but they seemed to have then disappeared and

(Testimony of Paul Winans.)

avoided me like an evil spirit avoids holy water, and so I began to want to see what was behind it. I didn't have to have the financing, but if it was there I wanted to use it. So I first attempted to contact Stegmann, and I made several attempts to contact him by telephone, but it was always—I never got to talk to him at McMinnville. The report was that he was out on one of his large stock ranches in Eastern Oregon fighting fires, such as that, didn't know when he would be back. At one time Mrs. Stegmann answered the telephone, and she told me about him being out on a forest fire, and so, not being able to contact him, then I attempted to contact Mr. Parker by telephone. I did. I told him what about that Stegmann had promised this \$10,000 loan, and he said he did not know about that, but Stegmann had the money to do it with and that he was sure that Wardell would yet appear and go through with his representations. [S16]

Now, none of those things came about because that was my purpose to find out where Parker stood on this deal as I would like to contact him and actually tried to in that telegram following the break of this Stegmann publicity up there. I thought that probably at that time Mr. Parker might be interested in some discussions and by that means I would get in contact with him and find out all about the feature of the financing which had been definitely promised.

Q. So that is what you had in mind when you sent this telegram about serving mutual interests through a primary conference?

(Testimony of Paul Winans.)

A. Yes; I wanted to get in contact with Mr. Parker. That is the picture behind the telegram.

Q. You did not have that conference, however?

A. Beg your pardon?

Q. You did not have the conference?

A. No; no, I never had any response to it at that time, later.

Q. Well, you knew he did not get the telegram until——

A. Well, I tried to find out whether he did or not by calling the telegram or telephone office, and I believe the report was that it had been left at his residence and that he had not received delivery.

Q. You remember that the last stamp on the envelope is December 6th?

A. Beg pardon? [817]

Q. Do you remember that the last stamp——

A. Let me see it. Maybe I do.

Q. Yes. A. I don't——

Q. The last stamp on it is December 6th, and could we find out when this lawsuit was filed?

The Court: November 27th.

The Witness: It was before I knew about it.

Q. (By Mr. Jaureguy): How long had you and the members of your family been discussing or considering this so-called reserved area that you were going to reserve about the lake?

A. I didn't quite get the question.

Q. How long had you been—when did you make up your mind or your family make up your mind

(Testimony of Paul Winans.)

that you were going to reserve a portion of this lake? A. This specific reservation?

Q. No, a reservation that you were going to reserve.

A. I would say from the very first inception of the consideration of sale to anyone of the entire property.

Q. Did you tell Mr. Linville and Mr. Monchallen anything about reserving any portion of it?

A. Yes.

Q. Now, what portion of it—what you wanted reserved of it was along the lake front, as I understand it? A. Yes. [818]

Q. When you reserved it, were you going to sell that as a separate piece, or were you going to divide it up among members of the family, or how were you going to handle it?

A. Oh, that would remain to be worked out. I think there was contemplation of a possible distribution of it among other members of the family.

Q. Division of it, and into about how many pieces would you plan in dividing it?

A. I would imagine not over three or four.

Q. Well, when Mr. Stegmann was up there the first time on the survey, didn't you divide it up into pieces then? A. No.

Q. Well, then, when those other men went up there—I don't remember their names, two men?

A. Are you referring to Mr. Haynes and Mr. Kuns?

Q. That is right.

(Testimony of Paul Winans.)

A. Yes, we completed the survey around the property so as to get some idea of what we were going to set out for the reservation, and endeavored to do it, and Stegmann just would not agree to any plan of our layout of the reserved area.

Q. I am talking now about the time that they were up there, I think you said on the 26th or thereabouts.

A. That is right.

Q. At that time didn't you have the surveyors divide it up [819] into several pieces?

A. No, we had not gotten that far. We would have had it done on the afternoon of September 26th, but Stegmann refused to agree to it, to do anything.

Q. Well, how many pieces were you dividing it up into then?

A. There was a definite understanding with Stegmann in advance that there was to be an area of approximately one acre on the water, shore line, in the northeast section of the property that would definitely be reserved there, and the rest of the ground then would come over there on the lake shore which Stegmann would get, and we would take the balance of the 8.88 acres in the swamp ground towards the southerly side of the property.

Mr. Lindsay: Will you read that last answer?

(Last answer read.)

Q. (By Mr. Jaureguy): But the eight and a fraction acres was the amount that the Winans family were reserving for themselves?

(Testimony of Paul Winans.)

A. That was reserved in the option.

Mr. Jaureguy: I wonder if I could get Exhibit 303.

Q. I want to hand you Exhibit 303 which you identified before and show you the figures in what I will call the left-hand margin although it depends on how you have it. These figures here, whose handwriting are they in?

A. I would say that looks like my own. I believe it is. [820]

Q. That looks like your own, and that totals up to 363,588 square feet? A. Yes.

Q. You figured that that was 8.346 acres?

A. Yes.

Q. And you have got this 363,000-plus by adding up the square footage into these rectangles?

A. No, I did not, I am sure.

Q. Well, let us take a look now.

A. All right.

Q. You start at the top. What is that?

A. That is someone else's subscription.

Q. I know. I am not asking you whether that is your handwriting. That is 231,554, isn't it?

A. Right.

Q. Isn't that the figure you put down there?

A. Yes.

Q. The next one is 17,408?

A. Yes, that is right.

Q. And the next is 19,806? A. Yes.

Q. And the next is 20,000? A. Yes.

Q. Next is 10,150? A. Yes. [821]

Q. Next is 10,650? A. Yes.

Q. The next is 12,500? A. Yes.

(Testimony of Paul Winans.)

Q. The next is 12,360? A. Yes.

Q. And the next is 13,520? A. Yes.

Q. The next is 15,640? A. Yes.

Q. And they total 8,346 acres?

A. I think the addition is correct.

Q. Yes, I think it is, too. A. Yes.

Q. Then I am holding this now so that the top is north, am I not? A. That is right.

Q. And the last 1, 2, 3, 4, 5, the last 6 of those numbers you read off are on the northeast portion of the small tract, are they not?

A. That is right.

Q. Then is this the way you wanted the acreage reserved?

A. This map was left with me by Mr. Stegmann, and I believe——

Q. Please answer the question that I asked. Is this the way that you wanted the reserved [822] area? A. No.

Q. How did you want it?

A. The way I have described. I was going to take an acre right over here and the rest of it in the swamp ground. (Indicating.)

Q. You say you were going to take an acre up here? (Indicating.)

A. One acre.

Q. Well, what about this 5.31 acres? Isn't that in the swamp ground? A. Yes.

Q. Yes; so you have got 5.31 acres in the swamp ground? A. Yes.

(Testimony of Paul Winans.)

Q. What about that immediately north of that, the next three large tracts?

A. Well, I know, I do know that was the understanding. That was what we finally arrived at, was something like that. This was not the final map.

Q. I understand that, but this map, however, does give you acreage in the northeast corner, doesn't it? A. Yes.

Q. And it reserves——

A. No, it does not have my acreage there.

Q. I mean in the northeast portion is the property that you have included in adding up your eight—— [823]

A. I do agree with you, I say that they include that; but I will say further that this is only a check on the map that was submitted to me, trying to find out what they were driving at.

Q. I understand, but by this map the reserved area includes property starting at the northerly portion of the land fronting on the lake and continues all down the lake to within 150 feet of the south boundary, does it not?

A. To say that would be a misnomer. That would not be right.

Q. Why not?

A. Because this was not the final agreement at all between——

Q. I am talking about this map now.

A. Well, right, talk about this map.

Q. This map includes in the 8.346 acres, includes land fronting on the lake from the northern bound-

(Testimony of Paul Winans.)

ary to within 150 feet of the southern boundary, does it not?

A. Yes, it does, but it does not cover at all what they were talking about or what they agreed upon. I would not want to be misunderstood by that.

Q. Now, is any of that Lot 1 desirable homesites, that is not fronting on the lake?

A. That would be desirable as homesites?

Q. Yes. A. Yes.

Q. Do you mean that people would want to live on Lost Lake [824] and have other property between them and the lake owned by other persons?

A. If it were me, I would say that I might object, but I do know that there is many summer homesites in the woods that are not on lakes.

Q. Oh, yes; yes, I understand that, but you will agree with me that there could be no homesites on that small lot if you reserved the property set forth in this map, 303, that fronted on the lake?

A. That there could be none that were desirable back of it?

Q. None at all; there could be none that fronted on the lake? A. That would be right.

Q. Yes.

A. But, mind you again, that map has got no particular significance. It was not agreed on with anyone at any time.

Q. No, your option said that those 8.88 acres would front on the lake? A. That is right.

Q. Why did you want it all fronting on the lake?

(Testimony of Paul Winans.)

A. I said adjacent to; it couldn't all front on the lake.

Q. Well, adjacent to the lake.

A. It would have to run back.

Q. Yes, but why did you want it all adjacent to the lake? A. Pardon?

Q. Why did you want all the reserved area adjacent to the [825] lake?

A. Well, it was ours, and we were entitled to make the choice.

Q. Yes, that is correct, but why did you make that choice?

A. I made the choice giving the other man, intending to give the other man a fair break, keeping one of the most desirable locations, and we would take the rest of it all in the swamp ground.

Q. I do not think your objection to this map is that it was unfair to the purchaser, is that it?

A. Pardon?

Q. I do not think your objection to this map is that it was unfair to the purchaser.

A. Oh, not at all, just simply my own consideration.

Q. This map has a reservation of all the property along the lake front, takes all but the southern 150 feet; that is correct, is it not?

A. No, it is not correct.

Q. What is wrong with that statement?

A. Let me gather myself here, and I will try to clear that up, because to agree to that would be entirely wrong.

(Testimony of Paul Winans.)

Q. All right.

A. For one matter, isn't there another map around here, the final map?

Q. I have not seen it. [826]

A. Well, there is such a map.

Q. We are talking about this map.

A. All right; I had nothing to do whatsoever with laying out these areas that you see here. These are, I think, areas of about 100-foot frontage along the meander shore line of the lake from which line parallel lines, that is, lines parallel with the north line of the Lot 1 as you read into a depth of around 200 feet. I never saw that map or discussed it until Mr. Stegmann brought it to me and submitted it to me along about August 27th or 28th, and at that time Mr. Stegmann told me that he would have to have all of this area, including the property that we had a gentleman's agreement that we should have here to this point where he starts up to 600 feet on the meandered shore line of Lost Lake.

Q. You have lost track of the question, Mr. Winans.

A. All right; if I am lost, I will be corrected, then, but I cannot tell the facts of this without some explanation.

Q. You may give your explanation, but before you give your explanation, would you please answer my question.

A. I am sorry.

Q. And the question was whether or not this map does not reserve the entire lake front in the eight and a fraction acres, except the southerly 150 feet?

(Testimony of Paul Winans.)

A. It does not. [827]

Q. What portion of the lake front is not included there, then?

Mr. Krause: Well, your Honor, that map shows exactly how many feet there are in all of the areas laid out, and we can read as well as Mr. Winans, and the Court certainly can read it, and I do not think it is anything upon which he is entitled to interrogate the witness.

Mr. Jaureguy: I think that is a very good suggestion.

Mr. Krause: Read it yourself.

Mr. Jaureguy: I just wanted him—he testified the other day, and you didn’t object to it then, to his testimony that that took away the northeast quarter.

Mr. Krause: He has explained exactly what this map was. He did not provide it. There was not any agreement.

Mr. Jaureguy: All right; I just wanted the record to show that the witness was in error the other day when he said that that map did not give him the northeast portion, because it does; it gives him the entire lake front.

All right; now, we can go on to another subject.

Q. Did I understand that when Parker was first mentioned to you he was referred to as a surveyor from Portland?

A. Certainly as a surveyor, and I believe, yes, I think Stegmann said from Portland.

Q. When did you first learn that he did not live

(Testimony of Paul Winans.)

in Portland? A. Pardon? [828]

Q. When did you first learn that he did not live in Portland?

A. I think about the first information I had on that was the article in the press in Hood River, that he was a Vancouver, Washington, resident.

Q. When did you learn that he was formerly from McMinnville?

A. Following that article I called on Mr. Travis, and he said that he had had a lot of difficulty in finding out who or what Mr. Parker was, but he had learned that he was a logging operator in the McMinnville area.

Q. When was that?

A. Following this first article in the paper. I can't give you the exact date.

Q. When was the article in the paper?

A. I can't give it exactly.

Q. The day after the deed was recorded?

A. Oh, no; it was a long time after that.

Q. Two weeks after? When was it with respect to this telegram? A. Before the telegram.

Q. Very long before the telegram? The telegram was November 22nd.

A. Oh, yes, a considerable time before that.

Q. Well, would it be as late as October 1?

A. Do we have anything to refer to on the date of that article in the paper? [829]

Q. I do not.

A. Well, I imagine that occurred in September and probably would have been before October 1st.

(Testimony of Paul Winans.)

Q. Now, how did you happen—when you agreed to sell this property, why did you make it in the form of an option instead of the form of a contract?

A. I am not a lawyer, but that was my concept of the way to go about it. I had some reasons, I believe. Firstly, in some of the questions there was raised why not an agreement to buy and sell or sell and buy, and I think that my reason for that was that I didn't want to have a paper that in case that there was a default on that we would have to have trouble correcting, and I had a deal with a responsible party on this, and there was just no reason to get in anything like that, so I told Mr. Stegmann to fix it up in the form of an option, and if he failed to go through with it he lost his option money. He said he understood it.

Q. You think if that was the understanding it would not bother you? A. Pardon?

Q. That type of paper, you thought, would protect you if it was outstanding?

A. You mean an agreement?

Q. No, the option.

A. I would think that would cut it off right there when the [830] time ran out.

Q. The original draft provided for a thousand dollars down, and, I think, four thousand in three days? A. Yes.

Q. And he begged you to extend that for seven days?

A. Yes, he said three days was too short.

(Testimony of Paul Winans.)

Q. And so you extended it to seven?

A. Yes.

Q. Well, is that the first time you learned that he was—his financial condition was such that he could not raise \$4,000 in three days?

A. No, I didn't know a thing about his financial condition at that time.

Q. Oh, you didn't?

A. Well, maybe I did in an indefinite way, but I had no reports, no responsible reports at the time.

Q. I don't mean responsible reports. I mean what Stegmann himself told you.

A. Stegmann didn't tell me anything. He evaded all questions.

Q. Didn't he tell you all about his white-faced cattle, his ranches that he had?

A. Oh, that was the very first meeting. I asked him what business he was in. I wanted to know something about it. He said, "Oh, mostly white-faced cattle. I sell some machinery."

Q. And he was purchasing this for a hundred thousand dollars [831] for a summer home for his family?

A. Oh, no, there was no discussion about price at all. He said he wanted to buy a place away back from people as far as he could get. There was no discussion of price.

Q. Well, the option has a price of a hundred thousand dollars.

A. Oh, yes, but that was six or seven weeks later.

Q. Yes, but nevertheless when you executed the

(Testimony of Paul Winans.)

option did you think he was buying it for a summer home, or was he going to log it?

A. I only had his word. He said he didn't know anything about timber. He just wanted to keep it the way it was, a primitive area.

Q. So you thought he was either having it for a summer home or just for sentiment; is that right?

A. That is what he said. I might have had my——

Q. Did you think a man under those circumstances needed to have an extension of time from three to seven days to raise four thousand dollars?

A. Was not that. As a matter of fact, it was my intention in the first place when I started a rough draft of that option to make him pay \$5,000 for the option. I thought I would be just a little easier than that.

Q. Why did you think you should be easy on a man of that apparent affluence? That was before he asked you for the extension. [832]

A. Yes, I didn't care much one way or the other. We had the other deal which I knew that I could get.

Q. Yes, I know, but answer my question, please. Why did you think that you had to be easy on a man that was being——

A. Well, certainly I didn't feel that I had to be, but I just thought, I didn't want to be a "whole-hog" on the deal.

Q. Do you think \$5,000 down on a \$100,000 deal is being a "whole-hog"?

(Testimony of Paul Winans.)

A. It would be pretty stiff where the other deal only called for a thousand earnest money.

Q. You thought then when you made this—when you got through with your draft, you thought that he was the type of man that a thousand dollars down would be what you could expect from him?

A. I think for a three-day period it wasn't too bad.

Q. Then later you extended that to seven days?

A. Yes.

The Court: Are you going to go into a new subject matter, Mr. Jaureguy?

Mr. Jaureguy: Yes.

(Discussion off the record.)

The Court: We will recess until 1:30.

(Noon recess taken.) [833]

PAUL WINANS

recalled as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been previously duly sworn, was examined and testified as follows:

Further Cross-Examination

By Mr. Jaureguy:

Q. I think you testified, Mr. Winans, that when you got down to brass tacks discussing price with Stegmann, you said that your father used to say that the property was worth \$25,000, and you thought at that time, at the time you were speaking.

(Testimony of Paul Winans.)

it was worth three to one? A. I said that.

Q. Were you referring to Lot 1, the small tract, or were you referring to both tracts?

A. I was referring to Lot 1. That was the only portion that was under consideration.

Q. Just the small tract? A. That is right.

Q. Then in 1943 when you were negotiating, 1943-1944, when you were negotiating with the government, was there a segregation in values between the two tracts in your discussion with the government? A. No.

Q. There was not? A. There was not.

Q. When you made them that formal offer, how much was that? [834] A. 65.88 acres.

Q. How much was the price you were asking?

A. I started off at \$20,000, but it finally got down to a tentative agreement of around \$7,500 to \$8,000.

Q. When you made them that formal offer in January in writing, what was the amount?

A. \$8,000.

Q. You think that the values had gone down then in the meantime? A. No, I did not think so.

Q. Why did you make them that offer then?

A. Because the sale of some property of a family holdings somewhere was very imperative at that time.

Q. Had you tried to sell it elsewhere?

A. Yes, I had been talking with another party.

Q. Well, now, when the government rejected that offer they said that they would give you \$2,000 for the small tract? A. Yes, they did.

(Testimony of Paul Winans.)

Q. Would you say, if it is judged on the basis of the timber on it, that three times as much for the larger tract than the smaller tract is about right?

A. I would not say anything like that.

Q. What would you say?

A. Well, after all, the basis that we were dealing on and on which the insurance was written was on the government's [835] evaluation of the property as a whole.

Q. But I'm asking you if you were to divide the two on the basis of the amount of timber between them, there is three times as much value in the timber on the larger tract than on the smaller tract?

A. Well, in the first place, we never thought of dealing at that time on the timber value, except the only way the government would approach it.

Q. Have you any objection to answering my question, please?

A. None whatever. I thought it was.

Q. I have asked you twice whether or not you felt on the basis of the timber alone that the larger tract had three times as much timber value as the small tract?

A. Very nearly, I would say.

Q. Thank you.

A. Based on quantity of timber.

Q. I beg your pardon?

A. Based on the quantity of the timber I think that would be about right.

Q. And the quality of timber?

A. Quality, I think it is pretty much the same.

(Testimony of Paul Winans.)

Q. Now, as I understand it, your testimony is that on August 18th, the day that the option was exercised, you did not see Chet Parker?

A. I did not see Chet Parker. [836]

Q. And you say that he did not tell you that from then on you should be dealing with him as he had purchased the option?

A. No, he definitely did not tell me that.

Q. You will say that you did not ask him what he expected, an abstract or title insurance?

A. No, I didn't even see the man. It could not have been.

Q. You will say that you did not tell him that he could not have any title insurance? If he wanted it, he would have to buy it himself?

A. No; definitely not, at any time.

Q. You will say that you did not, on the 18th of August, in his presence, look for your report or pretend to look for your policy of insurance?

A. Most certainly not.

Q. Then, as I understand it, on the 30th—or I won't say the 30th—on a later date, you and he and others went up to Lost Lake to work on the survey?

A. Yes.

Q. Could you give us your best recollection of the date? Was that the 30th or 31st? The reason I ask is I think that on one occasion you thought it was the 30th. Then on the next occasion you thought it was the 31st.

A. I made no notations and had no record of any kind on that, and to the best of my ability I fix

(Testimony of Paul Winans.)

it with August 30th, with [837] a variation of one day one way or the other. It could have been possibly the 29th, but I would say about around the 30th it would have been, more likely than the 31st.

Q. Could you tell us about the length of time you were up there?

A. Well, we started from the service station in the forenoon. It is impossible to tell you just what hour because I made no records, but let us fix it at perhaps 9:00 o'clock.

Q. Nine o'clock? A. A. M.

Q. You left the service station?

A. Yes, it could have been earlier; it could have been later by an hour, one way or the other.

We drove up to the lake. That would take perhaps 45 minutes. Then we went out on this job, and the purpose at that time was to drive iron stakes and set up bearing trees, and which Mr. Parker did with his instrument and the tape, steel tape.

Q. The question is how long you were up there?

A. I am sorry.

Q. That is all right.

A. I would say, I know that we ate lunch there, finished what work we had to do, and returned and had a little refreshments and came home, but I think it had been not later than the middle of the afternoon, could have been later. I would say [838] it would be in a variation of an hour or two one way or the other.

Q. You would say you were not up there, then, more than about four hours?

(Testimony of Paul Winans.)

A. Oh, I rather imagine it was more than four, probably five or six, and that is subject to correction. I do not really now recall.

Q. Do you remember whether you stopped after you got down to the place, or did they go right on?

A. I don't think there was much tarrying there. We were riding in. Stegmann was driving the car. I think we got out, and Mr. Parker also had a car, and I think we broke up quite immediately.

Q. Whether the 30th was Thursday and the 31st was Friday, I don't suppose that would give you any clues?

A. No, that would not help me any. I wasn't keeping a diary. I am sorry.

Q. Now, at the time you went up there on the 30th, had any different boundaries of the reserved area been agreed upon other than what are shown on that map Exhibit 303?

A. There was some difference. There was another map that was submitted and that we were going by at that time. This was not the map we were working from then.

Q. How many maps did you have altogether?

A. I saw two; this one and the other. [839]

Q. Is the other one—you do not know where we can get the other one? A. I beg your pardon?

Q. You do not have the other one?

A. No, I do not.

Q. Do you know where there is one?

A. No, I do not.

(Testimony of Paul Winans.)

Q. Would you say that the other one includes the boundaries that are described in the deed?

A. Yes, I think definitely it was the intent anyhow to follow the description—the description was set up on the basis of this second map.

Q. Well, the second map, you say, was already made before you went up on the 31st or whenever it was?

A. I don't know—well, pardon me a minute. Yes; yes, definitely it was.

Q. Well, what would you go up for if the map was already made that covered the reserved area?

A. Let's see, the first map, the one that we have here, is the one that Stegmann brought prior to the 30th or 31st, whichever date it was, and left with me. That is the one in which he served his ultimatum, as I called it, about what they would take or they wouldn't. That was left with me, and that is why I have it. Now, when Mr. Stegmann and Mr. Parker came up on the 30th or 31st, they had another map, and, as I remember [840] it, it didn't quite follow the set-up on this one.

Q. What was the necessity then—oh, it didn't quite follow it?

A. No, I think there was a difference.

Q. But was that the one that covered the property that is described in the deed? A. Yes.

Q. Well, then, what was the reason for going up again if they already had the proper description?

A. The reason, as I recall it, was to go up there

(Testimony of Paul Winans.)

and drive these permanent stakes and set up the bearing trees.

Q. They already had the map?

A. Yes, definitely.

Q. Well, as a matter of fact, didn't you and Mr. Parker have some rather heated arguments about the reserved area when you were up there that day?

A. None, whatsoever.

Q. None, whatsoever?

A. None, whatsoever.

Q. Well, can you give me the—can you give me the occasion, if you know—first, I will ask you, do you know the occasion for making the new map with an entirely different boundary of the reserved area?

A. I do not know why. I knew they brought it.

Q. Was it the boundaries of this map or of the new map that [841] you objected to?

A. Of this map. There was no objection raised on this that—on this trip on the 30th. That had been settled and agreed to with Stegmann when he served his ultimatum.

Q. So that the boundaries as set forth in the new map and as set forth in the deed were satisfactory to you?

A. Yes, I accepted them as such. I had them checked by a competent engineer to see that it worked out.

Q. Under the description of the deed, you do not get the property in the northeast portion—

A. Pardon?

(Testimony of Paul Winans.)

Q. Under the description as set forth under the deed, you do not get the property in the northeast portion of this tract, do you?

A. No, I was forced to give that up when the ultimatum was served.

Q. I thought you said that the description in the deed was satisfactory to you.

A. It was after I had made the agreement and I was sticking to my bargain.

Q. I see, and you say that that was not the result of arguments that you had with Parker upon the tract on the 31st of August?

A. Absolutely not.

Q. You say that that new map was prepared and with you, was [842] up there on the 30th when you went up there?

A. Yes, they brought it with them.

Q. Therefore, they were not up there for the purpose of surveying new boundaries, but for the purpose of putting stakes in a boundary that had already been agreed upon?

A. On the second map.

Q. And it took four or five hours to do that?

A. Yes, it did.

Q. As a matter of fact, don't you recall that that new map never showed up until along about September 4th, or thereafter?

A. No, that would not be true. It showed up when I said it did.

Q. I think you said that Mr. Parker—that you told Parker that the title company had suggested

(Testimony of Paul Winans.)

you had defrauded them. Would you tell me which Parker that was? Was that Chet Parker or Vawter Parker? A. Chet Parker.

Q. Chet Parker? A. Definitely.

Q. You told him that the title company had suggested that you had defrauded them?

A. Oh, that came as an aftermath, after we had gotten around to conclude on the whole—just a comment on my own part.

Q. What day was that?

A. August 30th or 31st. [843]

Q. That is when you were up there on that survey? A. That is right.

Q. You say at that time he was not objecting to your getting the northeast corner on account of the
* timber there, but he wanted the timber?

A. He didn't tell me anything about wanting the timber.

Q. He did not? A. He did not.

Q. On the 8th I think you have said you were—Saturday, the 8th, you were in the City Engineer's office working out a description? A. Yes.

Q. Were you there alone? A. No.

Q. Who was with you?

A. Walter Stegmann, Mr. Rutlaw Haynes, and the City Engineer, Mr. Andreson, was in there for a short time, went out, told us to go ahead and use the office.

Q. Did you work out the description in the City Engineer's office? A. Beg your pardon?

(Testimony of Paul Winans.)

Q. Did you work out a description in the City Engineer's office?

A. Yes, so far as I know. They came about—after a time I had to leave Mr. Stegmann and Mr. Haynes and return home to [844] get my children to take them for a dental appointment, and when I returned this description was submitted in a type-written form.

Q. The same description you have here?

A. Pardon?

Q. The same description you ultimately used in the deed?

A. Well, that was, that was what the description was worked up from.

Q. I beg your pardon?

A. The description in the deed was worked up from it.

Q. From the one that was worked up from the City Engineer's office?

A. Yes, I don't think exactly like it. I know Mr. Parker had considerable objection to using a type-written prepared form.

Q. What were his objections to it?

A. Well, I think the terminology for one thing. That is, in this description, as I remember, it started from a meander corner between sections 9 and 16 on the lake shore, and, as I remember, it went by steps and bearings, a hundred feet, approximately a hundred feet, and from that point then, approximately another hundred feet, and approximately and approximately and approximately until it reached, I

(Testimony of Paul Winans.)

believe, six hundred feet, and Parker said that that "approximate" terminology was not good.

Q. When it was repeated so often? [845]

A. Yes, that was it.

Q. That is Vawter Parker, I take it?

A. Vawter Parker.

Q. So, on Monday you worked on the description again?

A. I don't know so much about the description of the reserved area. I think it was worked over to some extent. However, I believe that that question was pretty well set by the evening of the 8th.

Q. Well, I think you said that Vawter Parker had suggested that they take it over to the title insurance office and have them look it over.

A. Yes, he did.

Q. When did he make that suggestion?

A. Pardon?

Q. When did he make that suggestion?

A. I think that quite definitely was on the 8th. It possibly could have been the 10th.

Q. Was the title company open on the 8th, on Saturday?

A. I really don't know whether they stay open Saturdays or not. I don't have much business there.

Q. When Vawter Parker made that suggestion, did he say anything about that they were going to write the title insurance and that therefore they ought to approve the deed?

A. Did Vawter Parker say that?

Q. Something of that kind. [846]

(Testimony of Paul Winans.)

A. No one said anything about that.

Q. Had you had any conversations with Vawter Parker as to whether the purchasers or the Parkers, anybody——

A. None whatever.

Q. You said none? A. Pardon?

Q. You said none. I want to finish my question before you answer.

A. I am sorry.

Q. Had you had any conversations with relation to possible insurance by purchasers of this property with Vawter Parker? A. No.

Q. Did he say to you that he wondered whether they were getting title insurance?

A. I would not say that although I do know there was an element of wonderment about the whole transaction, the whole deal.

Q. Were there any elements of wonderment expressed with respect to title insurance?

A. I can't recall anything specific on that.

Q. Had you told Vawter Parker that you had collected from the title company on this same company? A. Yes.

Q. When did you tell him that?

A. I should rather think I told Vawter Parker that even before this transaction came up, just as a matter of everyday [847] conversation. It is my recollection that I told him about it.

Q. Well, how long before?

A. I don't see Vawter very much ordinarily, but I would say maybe a month or so before, without particular relation to this deal at all.

Q. When you took this deal up to him did you

(Testimony of Paul Winans.)

tell him again that this was the same property that you had collected from the title company on?

A. Yes.

Q. You did?

A. Yes, in the course of the business at hand, I certainly did.

Q. In connection with that, you did not have any discussion with him at all as to whether the purchasers were getting title insurance?

A. None whatever.

Q. None whatever? A. No.

Q. Did he express—was there any element of wonderment expressed by him as to whether there was “a fast one” being pulled on the purchasers?

A. No, not at all.

Q. Did he express himself as to whether the purchasers were—whether it was a good deal for the purchasers? [848]

A. I think not. I am trying to search my memory only.

Q. Did he ask you whether you did not think it would be a good idea to advise the purchasers about—

A. No, he did not.

Q. He didn't. You didn't have any discussion with him on that subject whatsoever?

A. No, it may have been covered in private conversation that it was a peculiar looking deal, but that would have been all.

Q. That is, he thought it was a peculiar looking deal?

(Testimony of Paul Winans.)

A. I would not say that. Probably I subscribed as much to that as he did if we discussed it at all. I am not saying definitely if we did discuss it.

Q. But you did not discuss with him that it would be advisable to advise the purchasers of that?

A. I am certain neither he nor I advanced that thought.

Q. Or to advise them that the title was not too good?

A. I am certain it was not considered.

Q. That was not discussed, anyway. Whether it was considered, it was not discussed between you and Vawter Parker?

A. As to the advisability of enlightening them?

Q. I beg your pardon?

A. You mean as to the advisability of telling them about the condition of the title?

Q. Yes, that is right.

A. Yes, that had been told them over and over again. Vawter [849] did that.

Q. What is that?

A. They had been told, and I went over that with Walter Stegmann. He had been told over and over again.

Q. That is not the question I am asking you. We have been discussing now for some little time a discussion between you and Vawter Parker.

A. All right.

Q. Now then, you said it was not discussed between you and Vawter Parker as to whether you should enlighten the purchasers.

(Testimony of Paul Winans.)

A. Enlighten them as to what?

Q. As to this defect in the title.

A. I don't think it was brought up as a matter of discussion because I had already told Vawter Parker that point blank.

Mr. Jaureguy: That will be all.

The Court: Did you not testify that you asked Vawter Parker to prepare an instrument to be signed by Mr. Stegmann in which he acknowledged defect in the title?

The Witness: Well, your Honor, I prepared that myself and asked Vawter Parker if it would not be a good idea.

The Court: Was Vawter Parker present at the time you presented it to Stegmann for signature?

The Witness: I am sure he was.

The Court: Did you present that to Stegmann on the Friday before the deed was delivered to Mr. Abraham? [850]

The Witness: I am quite certain that I presented this to Mr. Stegmann on the 8th, but I would like to observe that the deed was not delivered even to Stegmann until the evening of the 10th. This is the final deed.

The Court: What day was the 8th?

Mr. Lindsay: Saturday.

Mr. Buell: Saturday.

Q. (By Mr. Jaureguy): You say the deed was not delivered to Abraham until the 10th. What was delivered on the 10th was a carbon copy, was it not, of the proposed deed?

(Testimony of Paul Winans.)

A. Oh, yes, surely, the money had been paid on the—it is my recollection that Stegmann carried away a copy of the deed which had been completed on the evening of the 8th.

Q. You were shown that carbon copy here, were you not, in your direct examination?

A. Of the deed?

Q. Yes. A. I believe I was.

Mr. Jaureguy: Has that been marked?

Mr. Buell: I think it has been marked.

The Court: What number?

Mr. Buell: 27.

Mr. Jaureguy: It is admitted in evidence?

Mr. Buell: Yes, it is.

The Court: It is admitted. [851]

Mr. Buell: Yes.

Q. (By Mr. Jaureguy): Would you be able to say whether this is the carbon copy that was—of the deed that was—the preparation of which was completed on the 8th?

A. Yes, without, of course, a close analysis, I am quite sure that is.

Q. That was the deed then that was given to Stegmann on the, late in the afternoon on the 10th?

A. Yes, I believe it to be so.

Mr. Jaureguy: Thank you.

The Court: Mr. Ryan?

(Testimony of Paul Winans.)

Cross-Examination

By Mr. Ryan:

Q. Was the evening of the 10th the last time you saw Mr. Stegmann? In this instrument that you referred to that you asked Mr. Stegmann to sign, on what date was that given to Mr. Stegmann, according to your memory?

A. What day it was offered?

Q. Yes.

A. I am quite certain it was on the 8th of September; however, I would like to allow myself a little variation there. It could have been the 10th. I believe it to be the 8th.

Q. Where was it offered? A. Pardon?

Q. Where was it offered to him? [852]

A. I think that was offered in Vawter Parker's private office.

Q. You testified you were under the impression that Mr. Stegmann was purchasing this property, the Lost Lake property, for a private retreat?

A. That was what he told me.

Q. This Exhibit 303 that you looked at prior to the recess this morning, the map, that was brought to you by Mr. Stegmann? A. Yes.

Q. And on that exhibit were you aware at the time that Mr. Stegmann was not reserving anything but about 150 feet of lake front?

A. You say he was not reserving anything but about 150?

Q. Yes.

(Testimony of Paul Winans.)

A. Oh, no, he was requiring all shown on the map, I believe, for 600 feet.

Q. Is that in the swamp area?

A. No, it is not. It is the best of the lake shore land.

Q. That northeastern section there running on the map, as I recall it when I saw it, that is all lake front area as it is marked out there as going into the reserved area; at that time; is that correct?

A. For 600 feet?

Q. Yes. A. Yes. [853]

Q. Was the amount of lake front area given you initially in the map brought up by Mr. Stegmann, Exhibit 303, more lake front area than you eventually obtained?

A. As submitted by Mr. Stegmann?

Q. Yes.

A. No, when first submitted by Mr. Stegmann, it was to include that 600 feet as shown on the map that we have been looking at, all of it.

Q. How much lake front area did he subsequently get?

A. He got about the 600 feet, as I recall it.

Q. On the morning of the 18th, I believe your testimony was that you went to Lost Lake in the company of Mr. Stegmann, a person introduced as his brother Carl, a Mr. Bogar and Mr. Haynes?

A. Yes.

Q. At the time you were walking into the Lost Lake area did you have any conversation with Mr. Stegmann that you recall?

(Testimony of Paul Winans.)

A. It is quite likely I did; however, I would like to have that open. I am not sure whether Stegmann was on the ground when we got there with the surveyors. It runs in my mind that he and his brother appeared on the ground when we were out working in the woods.

Q. You could not remember any conversation that took place at that time as you were going in; is that your testimony?

A. Not unless some specific point were submitted that would [854] refresh my memory. I don't remember of any particular conversation at that time.

Q. Was at that time or any other time on the day of the 18th the name of Chet Parker brought up to you?

A. Repeat please. My hearing is a little off.

Q. At that time or at any other time of the day or evening of the 18th was the name of Chet Parker brought up to you by Stegmann?

A. No, not at all.

Q. Now, the second map contained, so far as you were concerned, the reserved area as you finally agreed with him?

A. No, not quite. There was an adjustment made there under which I got some more ground in the final description in the deed.

Q. When was that adjustment made?

A. That was finally determined in Vawter Parker's office.

Q. Was it discussed up there on the day you

(Testimony of Paul Winans.)

were up there with Mr. Parker and Mr. Stegmann and his son?

A. Yes, to this extent, with Stegmann only, that by that time it was determined that in order for me, or our family to get the eight and a fraction acres that a line would have to be drawn from a certain point working in from the meander corner directly to the extreme southwest corner of Lot 1, and I then, I think, at that time submitted to Stegmann that if I should like to set the corner in or the line in around 200 [855] or 300 feet north of the southwest corner of Lot 1 in order to include all of the Inlet Creek on the reserved area, would it be given consideration. And I think that it was tentatively discussed then, but it was not determined at that time.

Q. When was it finally determined, in Vawter Parker's office?

A. Vawter Parker's office.

Q. Was Mr. Parker a participant in the discussion about that? A. Pardon?

Q. Was Mr. Parker a participant in the discussion up there about that, Mr. Chet Parker?

A. No.

Mr. Krause: Well, your Honor, I think that they should state which Parker they are talking about. I did not know who he was referring to until at this moment, whether it was Chet or Vawter.

Mr. Ryan: I did try to rectify it. I said Mr. Chet Parker.

(Testimony of Paul Winans.)

The Witness: No.

Q. This discussion that took place up on that area——

A. Was he in that discussion?

Q. Yes.

A. Well, he was there, but the discussion was with Stegmann.

Q. You have testified here that the taxes on this property were paid by your family except for an interval when a mortgagee [856] on the property paid the taxes. Which mortgagee was that?

A. W. B. Combs or A. B. Combs, his representative.

Q. Was his mortgage on the entire property?

A. Yes.

Q. Did he know about this defect?

A. I think that he did.

Q. Did you tell him about this defect?

A. Well, I negotiated that loan, and it is a long time back, and it would be hard to say that I did or did not. My impression is that I would have so done, consistently with all of my other representations.

Q. You cannot recall whether or not you did?

A. No, I couldn't tell you definitely, and I would not want to do that.

Q. At one time you said that Mr. Parker made some request about acquiring the back forty only?

A. Pardon?

Q. Did you testify that at one time Mr. Parker—Mr. Stegmann wished to acquire the back forty only?

A. Yes, he did.

(Testimony of Paul Winans.)

Q. Did that seem consistent with you to his desire to acquire a retreat away from everyone?

A. Well, it is pretty hard to say that any part of his talks was too consistent, but I accepted it as such. He did, [857] specifically did set up that he needed to have this forty, the back forty, as we call it, in order to protect the property he owned on the front forty. Someone might come and acquire it later and log it off and ruin this beautiful retreat that he was purchasing.

Q. But any acquisition of the back forty was purely in relation to the front property; is that what you understood?

A. Repeat that, please.

Q. Any request he made with regard to breaking up the back forty, in your recollection, related entirely to the lake frontage property?

A. He set it up that way.

Q. But, it is your testimony that at no time Mr. Stegmann indicated that he wanted this property for timber purposes?

A. Absolutely to the contrary-wise. He told me specifically he knew nothing about timber whatsoever, was not interested in timber.

Q. You felt that the property that he was seemingly willing to give you at the time that he gave Exhibit 303, the lake frontage property, was consistent with his idea of acquiring this property as a lake front retreat or as a retreat?

A. I don't quite get the point of the question.

Q. At the time he brought you Exhibit 303 did

(Testimony of Paul Winans.)

it strike you at all strange that Mr. Stegmann would be willing to relinquish that prime lake front property willingly in view of the fact [858] that his only purpose of use was for a summer retreat or retreat away from everyone?

A. Well, it certainly didn't sound like sense to me.

Q. And yet, it was Mr. Stegmann that brought you this map 303? A. Yes.

Q. Would you tell us when Mr. Parker and Mr. Haynes departed on the evening of the 18th?

A. Again——

Q. Mr. Parker and Mr. Haynes, the two surveyors, do you have some recollection as to when they left the premises down at the gas station on the evening of August 18th? A. Generally, yes.

Q. Was it before or after Mr. Stegmann left?

A. Pardon?

Q. Was it before or after Mr. Stegmann left?

A. I think that it was after Mr. Stegmann left. Mr. Ryan: I have no other questions.

The Court: Mr. Krause?

Mr. Krause: I would just like to offer in evidence the memo made by Steele—that is the Forest Service man—after this conversation on October 23, 1943, with Mr. Winans, and this comes out of the file. The exhibit does not have the year on it, but it comes out of the file of the Forest Service as of that date. I think counsel have all seen it. [859]

(Testimony of Paul Winans.)

The Court: While you are looking at that, may I ask one or two questions.

Examination by The Court

Q. Is it your testimony the first time Mr. Stegmann contacted you he told you he wanted to buy this property as a retreat? A. That is right.

Q. Now, at the time of the option or shortly before were you still of the opinion that he wanted the property as a retreat?

A. I accepted it as such.

Q. Well, now, if you wanted the reserve area to subdivide for lots, and you intended to sell that for use for summer cottages, didn't you?

A. That was a long time ago, sir.

Q. Well, for what purpose did you want a reserved area at the time the option was given?

A. Our family, for our family use.

Q. Did Mr. Stegmann know the purpose of the reserved area?

A. Very definitely. I told him just why we wanted it.

Q. And "family use" means for yourself and your brothers and sister and their families?

A. Those that might want to use some of it.

Q. Didn't Mr. Stegmann object to the reserved area by reason of the fact that it would impair his desire for seclusion? A. No, he did not. [860]

Q. Didn't you think that that was quite peculiar for a man to spend a hundred thousand dollars to get away from society and then have that whole Winans family over there?

(Testimony of Paul Winans.)

A. Truly, that is a new thought to me. He felt as though he were maybe King Midas himself.

Q. You testified that you were not very much concerned as to whether or not Stegmann purchased the property or not because through Mr. Linville you had a buyer who you knew had the finances with which to make the purchase and who had made you a firm offer?

A. I did so testify that, but, your Honor, back of that and behind it the time of emergency had passed in our family, and there was a sentimental reason attached to that property and we were pretty reluctant to sell any property to any one at all.

Q. I thought that you testified earlier that after you had talked it over with the family you figured that if Mr. Stegmann got real tough that you would abandon all the reserved land because you felt that the hundred thousand dollars was a lot of money for this property?

A. Well, it was beyond anything we had for consideration although working it up on timber values it was not far off. We were not thinking of it as timber values and by the time the thing had got around to where the family was interested in a sale they wanted to sell. [861]

Q. In other words, actually you were concerned as to whether or not Mr. Stegmann would purchase this property; were you not?

A. By that time, but certainly not in the beginning of the negotiations.

(Testimony of Paul Winans.)

Q. Well, how about the time that you entered into an option? Were you concerned at that time?

A. No, I would not say I was concerned. I would not have been hurt or disappointed if the whole thing had dropped out.

Q. Well, isn't it your testimony that if you had not sold it to Mr. Stegmann you would have sold it to Mr. Linville's client?

A. Yes, I think we would have.

Q. Now, the sale to Stegmann would have yielded approximately 23 or 24,000 dollars more than the sale to Mr. Linville, wouldn't it?

A. That is right.

Q. Don't you regard \$23,000 as a substantial amount of money? A. Yes, it is.

Q. And yet, your testimony still stands that you were not very much concerned as to whether Stegmann would buy or not?

A. Initially, certainly not, and by the time I would say—well, let us state it then from the time that we did reach a concrete understanding, from then on I think that the sentiment of the family was that they wanted to sell, and I know I felt [862] a little reluctant about it myself even then.

Q. You have used the word "sentiment" in two respects. Do you mean to say that it was the desire of your family to sell when they no longer had any great sentiment for the land itself that they previously had?

A. No, I think they still retained it, and it hurt a little bit to give that up.

(Testimony of Paul Winans.)

The Court: All right, Mr. Buell.

Mr. Ryan: May I ask a few more questions?

(Discussion off the record.)

Mr. Krause: I want to offer that exhibit in evidence as Exhibit 63-C. That is the notes of Mr. Steele of this conversation with Paul on October 23, 1943.

The Court: Any objection?

Mr. Jaureguy: Not if somebody is going to be called, no, I have no objection, but if anybody is going to be called from the Forest Service, I object on the ground it is hearsay, but I have no objection if somebody will assure me that somebody is going to be called from the Forest Service.

Mr. Buell: Mr. Ralph Cooke, the person to whom it is addressed, is subpoenaed.

Mr. Jaureguy: That is all right, then.

The Court: If that is the case, why introduce it now?

Mr. Krause: Well, everybody has had this Forest Service file available to them, and this was marked as an exhibit at the [863] time. I didn't suppose—they know that it is out of the Forest Service file. It has something to do with a conversation that he had with Mr. Steele that day.

The Court: Are you objecting to it?

Mr. Ryan: No.

The Court: It may be admitted then.

(Document, photostat of letter dated September 24, 1943, to Mr. Paul Winans from Foster

(Testimony of Paul Winans.)

Steele, previously identified as Plaintiff's Exhibit 63-C for identification, was received in evidence.)

Cross-Examination

(Continued)

By Mr. Ryan:

Q. Can you see that comfortably?

A. Reasonably so.

Q. This Exhibit 303 you were looking at this morning, this one map you say Mr. Stegmann brought you first? A. That is right, it is.

Q. You don't know the whereabouts of the second map?

A. No, they had it in their possession and took it with them.

Q. Now, as this map is given here, was this to be reserved area, as you recall? I am pointing at the, let's see, beginning here on the northeast corner and running along the meander line of the lake down to about 60 feet beyond the creek.

A. No, it was not. It was understood by Stegmann at the very beginning that we would keep out about an acre in the extreme [864] northeast corner, and from then on over to the swamp ground with the Stegmann's. From there on we would take the swamp ground over to the south line for the remainder of the eight and fraction acre.

Q. Did it include any land——

A. Oh, yes, it did.

Q. ——south of the creek?

(Testimony of Paul Winans.)

A. Oh, yes, down south of the creek all the way to the southeast corner of Lot 1.

Q. The southeast corner of Lot 1 is the end of the map as drawn here in pencil?

A. That is right. That is west to whatever point it would take to make up the 8.88 acres but not to include this (indicating). Stegmann was getting that. That was understood.

Q. Are you familiar with these figures here?

A. Yes, those are my own. I had forgotten all about them, but they are mine.

Q. At the time this map was given to you, it was your understanding that all but an acre in the northeast portion of the property as given here with regards to the lake frontage would be reserved area?

A. You mean to include this stretch in here (indicating)?

Q. Yes.

A. No, I did not. I never submitted any such thing. You must remember this was Stegmann's map or Stegmann's and Parker's. [865]

Q. That was what they submitted to you, at any rate?

A. Yes—no, this was the one that Stegmann submitted, but they had the second one.

Q. At the time Mr. Stegmann submitted this map, that was his intention, as far as he was concerned, as expressed by this map?

A. Do you mean it was the intention that we

(Testimony of Paul Winans.)

keep out a portion here and then Stegmann take over?

Q. No, my previous question asked you how much of this map represented reserved area on the lake front, and you have testified, as I understand it, that it represented all of these lots but an acre in the very northeast corner and specifying how the acreage was, and it ran down beyond the creek and took in the entire area down to the southeast corner——

A. No, I didn't mean to say that. What I meant to say is that first we get our acre. Then Stegmann gets all the rest of the good frontage to the swamp line. From there on we make up the balance of the reserved area.

Mr. Ryan: That is all, your Honor.

The Court: Go ahead, Mr. Jaureguy.

Recross-Examination

By Mr. Jaureguy:

Q. I think you testified on your deposition that when you told Stegmann he could have the property that you told him that what really influenced you was that he was going to use it as a retreat, and the other party was going to log it? [866]

A. Yes, I did tell him that. I didn't know specifically whether or not the other party was going to log it, but I did know that he was in the timber business.

Mr. Jaureguy: That is all.

(Testimony of Paul Winans.)

The Court: Who was in the timber business?

The Witness: Pardon?

The Court: Will you read it back?

(Last answer read.)

Mr. Jaureguy: I take it by the other party you mean Monchallen?

The Witness: Yes, Mr. Monchallen.

Mr. Jaureguy: Linville's client?

The Witness: That is right.

The Court: Mr. Buell? [867]

* * *

KENNETH ABRAHAM

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Kenneth Abraham, and you are a duly licensed and practicing lawyer in the State of Oregon with offices in Hood River, Oregon; is that correct? A. Yes, sir.

Q. How long have you been practicing law in Oregon, Mr. Abraham? A. Twelve years.

Q. Were you consulted by Mrs. Chet L. Parker in connection with the sale of the Winans' family timber lying adjacent to Lost Lake in the summer of 1951? A. Yes.

Q. Will you state the date upon which you were first consulted with reference to this sale, if you can?

(Testimony of Kenneth Abraham.)

A. Well, the date was September 10th, and it was approximately, oh, shortly after five o'clock in the afternoon, and it was in my office in the city of Hood River.

Q. Who came to see you at that time?

A. Mrs. Parker and Mr. Stegmann.

Q. Was that pursuant to an appointment?

A. No.

Q. And had you received any advice during the course of the day, [869] of the 10th, that Mrs. Parker or anyone, someone was coming to see you late in the afternoon in connection with a sale or land purchase transaction?

A. None whatsoever.

Q. Did you know Mrs. Parker at the time you first saw her? A. No, never seen her before.

Q. Did you ascertain her name at that time?

A. I did not.

Q. Where was it that you first saw her?

A. Well, I first saw her in the waiting room or lobby of my office at about five o'clock or shortly after on the 10th.

Q. Then did she go into your private office?

A. I talked to her in the waiting room. I just came to the door and talked to her there for a few moments and asked her what she wanted.

Q. What did she tell you?

A. Well, it was either she or a man with her, Mr. Stegmann, and I cannot recollect for sure which one, but it was either one of them told me that

(Testimony of Kenneth Abraham.)

they would like to have me approve a form of bargain and sale deed. Incidentally, I knew Mr. Stegmann's name.

Q. How did you happen to know his name?

A. Well, my secretary had called me on my intercom and said, "There is a Mr. Stegmann waiting to see you."

Q. Did they have a proposed form of deed with them at that time? [870]

A. No, they didn't.

Q. Can you state with any certainty as to who was doing the talking, whether it was Mrs. Parker or Mr. Stegmann?

A. I can't state with any certainty as to that. I think I felt that I was dealing with the man. The reason I am confused about that fact is that the next morning Mrs. Parker is the only one that I dealt with, but in the afternoon of the 10th I believe that I could have been dealing with both of them. In other words, they were both entering into the conversation.

Q. After they told you they wanted to have you approve of a form of bargain and sale deed what next was done or said?

A. Well, I asked them where the deed was. I said, "Do you have the deed with you?" They said, "No." I said, "Where is the deed?" They said, "Mr. Parker is preparing it now and he will bring it right over."

Q. When you say "Mr. Parker" whom are you referring to?

A. Mr. Vawter Parker.

(Testimony of Kenneth Abraham.)

Q. Then what was the next thing that was done or said?

A. They asked me if I would approve the form of the deed. I asked them who was preparing the deed. They said Mr. Vawter Parker. I said, "I know Mr. Vawter Parker. I am quite sure the form of the bargain and sale deed will be quite satisfactory, and I have seen—I know Mr. Parker and I know his forms of deed are entirely satisfactory." I was anxious to leave the office.

Q. What did they say to that? [871]

A. They persisted that they wanted me to do this, and so I went into the inner office, and they stayed in the waiting room. I called Mr. Parker and asked him if he had this bargain and sale deed. He said at that time it was in his secretary's typewriter or he was just completing looking at it, and he would send it over, and he did in about, oh, I would say ten or fifteen minutes.

Q. During that ten or fifteen minutes period where did Mr. Stegmann and Mrs. Parker remain, out in the waiting room?

A. They remained in the waiting room.

Q. Then after the deed arrived what happened?

A. Well, the deed came in, was brought into the office, was brought in to me, and at that time I am quite sure that, although I cannot recollect for a certainty, but I am quite sure that both Mr. Stegmann and Mrs. Parker came into the office. I looked at the deed. It was just a regular bargain and sale form of deed in which the, it was an onion-

(Testimony of Kenneth Abraham.)

skin copy in which the name of a grantee was omitted. It was not a deed by entirety but a deed to an individual, that's right, and I just looked at it quickly. I don't think it took me 25 seconds to quickly scan and see that it was a satisfactory bargain and sale deed. I paid absolutely no attention to the description, and I said, "The form of this deed is satisfactory," and handed it back to them.

Q. Did you say anything besides that or——

A. No, I just said the form of deed is satisfactory, and that [872] is all I said then.

Q. Did she say anything?

A. Yes, she said, "Well, I am closing a real estate transaction, and I would like to have you assist me in the closing of the real estate transaction," and in response to that statement on her part I told her, first, it was after five o'clock, that nothing more could be done today, the court house was closed, and secondly, what was the nature of the real estate transaction and, "Did you have title insurance."

Q. What did she say to that?

A. She said that, "We have taken care of everything in this matter except that I would like to have you approve the form of this deed and to assist me in closing it." I asked her what she meant by "assist in closing." She said, "Would you assist me in seeing that the deed is recorded and stamps are placed on and the title checked as to," and she mentioned mortgage, a certain mortgage, I don't recall what the—who the parties were in the mortgage, and to check the records for a period of four or five days

(Testimony of Kenneth Abraham.)

prior thereto, and would I call Mr. Parker, Mr. Vawter Parker, and make arrangements to close this transaction, "tomorrow about 9:30." I told her I would.

Q. Did you?

A. I called Mr. Vawter Parker then, and I told him, asked him if they were ready to close this real estate transaction, that I had to check the records tomorrow morning, if we could close [873] it by 9:30 I would like to get it out of the way. He said that was perfectly all right with him.

Q. Then did you make any arrangements with Mrs. Parker or Mr. Stegmann as to when you would see them next?

A. I told Mrs. Parker or I told the both of them to come in the office the next morning about nine o'clock.

Q. Had you by that time learned the name of Mrs. Parker?

A. No, I hadn't. I had, in fact, assumed that her name was Mrs. Stegmann, but I had made no inquiry one way or the other.

Q. When you asked them about title insurance was anything said as to whether or not title insurance had been obtained on the property?

A. I did not receive a direct answer as to whether title insurance had or had not been obtained.

Q. Were you shown any preliminary report of title insurance as to that property on the evening

(Testimony of Kenneth Abraham.)

or the late afternoon of the 10th that you were just referring to? A. No.

Q. Did you do anything more in connection with the transaction that night? A. Nothing.

Q. Did you learn what the consideration or purchase price for the property was to be that night?

A. No.

Q. Was any indication of any kind given to you as to how much [874] was involved?

A. None.

Q. When did you next see Mr. Stegmann or Mrs. Parker?

A. I saw Mrs. Parker in my office the next morning about nine o'clock.

Q. Was Mr. Stegmann with her?

A. No, he was not.

Q. What did Mrs. Parker tell you at that time?

A. Well, she came in, and she had this onion-skin copy of this bargain and sale deed that I have mentioned before, with her, and she said, "Now, in closing the transaction I would just like to have you check up a certain mortgage and to also check the court house records with regard to any changes that the grantor might have made for four or five days back," the grantor on the deed being Ethel Winans.

Q. Then did she say anything else to you at your office other than what you have just outlined?

A. Nothing more.

Q. Then did you go over to the court house?

A. The two of us walked over to the court house

(Testimony of Kenneth Abraham.)

and I—I presume that I checked the mortgage records first because there had been this mortgage mentioned, to see whether it had been released. I checked the deed record. I checked the judgment record and the lien record, and I think I started to check the tax record or told her I was going to check the tax records, and [875] she said that was not necessary.

Q. Then what did you do?

A. Well, I told her that I had found nothing in this last period of time of four or five days which by that time I had assumed to be the date on which she probably had a preliminary report, although I did not know whether she had or had not received one. I found nothing on the record by Ethel Winans that had indicated any intermediate incumbrance on title, and I told her that.

Q. Then what happened?

A. Well, she said, “Well, we are ready to complete the transaction.” She said, “Would you take this check over to Mr. Parker’s office and get the deed for me?” I said, “Yes.” She handed me a check, and I took the check and started towards the court house door, and as I did so I opened the check, and that was the—I discovered the check at that time was a \$95,000 check, and I immediately turned around and came back to her and I said, “Mrs. Parker, this appears to be a very large real estate transaction. Are you sure that you have title insurance, and are you sure that the transaction is being handled and that you are being advised in the

(Testimony of Kenneth Abraham.)

way necessary to protect your interests?" She said, "I am quite sure about the way the transaction is being handled, and I am quite satisfied if you are satisfied with what you have discovered here this morning."

The Court: How did you know her name was Parker at that time?

The Witness: I did not know her name was Mrs. Parker at [876] that time. I am using that for identification.

Mr. Buell: Go ahead.

A. She said she was quite satisfied with everything, and so I went over to Mr. Parker's office, Mr. Vawter Parker's office, into his office, and he was alone at that time, and I went into his private office and told him I had a check, did they have the deed, and he said, "Yes,"—oh, by the way, I should go back just one step. I asked Mrs. Parker whose name I should have inserted as the grantee in the deed, and she said, "I will tell you when you come back with the deed." I went into Mr. Vawter Parker's office. I said "I have a \$95,000 check for a deed." I think the first question he put to me was, "Well, I haven't a name of the grantee filled in. Who should I fill in?" I said, "I will take it in blank."

Q. Was there anybody else present at attorney Parker's office when you arrived there?

A. Well, his secretary might have been in the waiting room. I am not quite sure of that.

Q. Were any of the Winans family there?

A. No.

(Testimony of Kenneth Abraham.)

Q. After advising Mr. Parker, or attorney Parker, that you would have to take the deed with the grantee's name in blank what was next said relative to going ahead with the transaction?

A. Well, the first thing he said to me was that, "There is a credit due to the purchasers on this," and I don't recall whether [877] he said, "Do you know how much," or, "I don't know how much," but anyway he said something to the effect that the amount of it had not been determined or approved, and we would have to wait for Mr. Winans. I said, "I don't know anything at all about a credit or any being due." I had not any information, none had been mentioned to me, and he said, "Well, Paul is supposed to be in here now. Let's wait until he comes in, and I will give you the check." So we sat there and waited, I think we must have sat there and waited there for at least ten or fifteen minutes when Mrs. Parker came in, come to Mr. Vawter Parker's office, and the secretary announced that Mrs. Parker was there and that—it is at that time that I first realized that her name was Mrs. Parker and not Mrs. Stegmann. I was assuming up until then, not, frankly, because of any deceit on the part of Mrs. Parker, but I was assuming, I think, that her name was Mrs. Stegmann. She had not given me any reason to believe that other than the assumption on my part because Mr. Stegmann's name had been given in my office when Mrs. Parker came in that night before.

(Testimony of Kenneth Abraham.)

Q. When she came in what was said at that time?

A. She wanted to know what the delay was, and we said we were waiting for Mr. Winans because we had to figure out what this credit check was. She said, "That's right, I do have a credit check coming," or words to that effect.

Q. Was she actually brought into attorney Parker's private [878] office or——

A. She was brought into Mr. Vawter Parker's office and sat down.

Q. Did she say anything else other than confirming that she was to get a refund check of some amount?

A. Well, we had a general conversation there.

Q. Was there any conversation as to the identity of the purchaser of the property at that time?

A. None.

Q. What else, if anything, did Mrs. Parker say while she was there in attorney Parker's office?

A. Well, I think she must have been there for five to ten minutes, and as her conversation could have been lengthy I don't recall all that she said. I recall some of the things that she said.

Q. What do you recall that she said?

A. Well, I recall very distinctly her saying that Mr. Stegmann was purchasing the property and that he was purchasing it for his wife, that she was having a new baby. He was purchasing it as a lodge for his wife.

Q. Do you recall anything else that she said at that time? A. Nothing more than that.

(Testimony of Kenneth Abraham.)

Q. Did attorney Parker enter into the conversation there?

A. Oh, yes, well, we all chatted back and forth. We talked about the weather and other incidental things.

Q. Then when did Mrs. Parker leave? [879]

A. Well, it was after we had been there five or ten minutes, I am not sure of the time, why, Mr. Winans came up the stairs, and Mr. Vawter Parker knows Mr. Winans well enough so that he was able, as I recollect, to recognize his footsteps or his manner of walking. He said, "Well, here comes Paul now." So Mrs. Chet L. Parker went out Mr. Vawter Parker's side door as Mr. Winans went into the waiting room.

Q. What happened next?

A. I should say that she told us that she was going over to the court house or told me that she was going over to the court house, and then Mr. Winans came in, and he came into Vawter Parker's office, and there was myself and Mr. Paul Winans and Vawter Parker, and we had a—I should say Mr. Parker and Mr. Winans had a short conversation about the credit check. I had no knowledge at all as to the amounts that were to be credited back and forth, and they had a short conversation, and that was that. I do believe, getting back to when Mrs. Chet L. Parker was in the room, I do believe that Mr. Parker told her what he thought the amount of the credit check was, and I do believe that she said, "That's right." Then when Mr. Winans came in,

(Testimony of Kenneth Abraham.)

why, he verified the amount of the credit check to Mr. Parker, too.

Q. Can you recall that amount when that was mentioned by attorney Parker while Mrs. Parker was there?

A. I can't recall it, but I have it written down here if you [880] would like to have me refer to it.

The Court: There is no dispute on it?

Mr. Jaureguy: There is no dispute.

The Court: \$4,750; was it not?

Mr. Jaureguy: Yes, there is no dispute about it.

Q. (By Mr. Buell): Then after Paul Winans came in what developed then?

A. Well, after the credit check transaction transpired, why, I can't recollect whether that \$95,000 check was in my hand or whether in the ensuing conversation, which had now gone on for approximately 20 minutes, that is, prior to Mrs. Parker coming over and during the time that she came over and after she left and Mr. Winans was in there, during that time I feel that I laid the \$95,000 check down on Vawter Parker's desk, and after he and Mr. Winans had satisfied themselves on the amount of this refund Mr. Parker took it out of his checkbook or tore it out of his checkbook and handed the refund check to me, and he also handed me the check for the amount of revenue stamps Mrs. Parker—I should go back again—apparently had said, although I can't recall it, had apparently said that she would put the revenue stamps on,

(Testimony of Kenneth Abraham.)

which later developed to be true, gave me a check for the refund, a check for the revenue stamps, and handed me a signed deed by Ethel Winans with the grantee's name in blank.

Q. After that what?

A. He either handed it to me or he laid it on the desk, and I [881] picked it up.

Q. After that what happened?

A. Well, Mr. Winans who was standing during that entire time, as I recall it, and I was standing because I was anxious to leave, said to me, he said, "If Mr. Stegmann had been here I had intended to tell him concerning a defect in title having to do with a claim of the United States Government," and he said, "Since Mr. Stegmann is not here, I would like to tell it to you," and he said, "I would suggest that he not record the deed because I think that this defect can be better clarified by possibly Congressional action in the name of the Winans family rather than in the name of Stegmann." I think he must have spent another couple of minutes trying to explain what the defect is. I do not yet know to this day exactly what the nature of the defect is. I have not gone into it.

Q. Had you had any specific conversation with Paul Winans about the transaction prior to the time that he told you about the defect, or have you just related—by specific conversation I mean where you and Paul Winans carried on a conversation relative to some phase of this sale?

(Testimony of Kenneth Abraham.)

A. You mean prior to that morning in Mr. Parker's office?

Q. No, during the few minutes, 15 I believe you said, 15 minutes or so, that he had been in there and before the time that he told you about the defect had you had any other conversations directly with Paul about this transaction? [882]

A. No, I think the first direct conversation I had with Paul was when he turned to me and said, "If Mr. Stegmann had been here," up until that time his conversation was mainly between him and Mr. Parker as to this credit.

Q. After he told you about that defect what did you do or say?

A. Well, I told him that I had, that I was a little unhappy about this transaction, not realizing the size of it and so forth; that I had yesterday or the evening before and this morning attempted twice to advise these people that—and by these people I meant Mr. Stegmann and Mrs. Parker—that they should have title insurance and that this transaction should be handled carefully, and I had particularly done so again this morning when I found out the size of the transaction in the form of a \$95,000 check, and I had been told each time that they were satisfied with the title and satisfied with the transaction and they just wanted me to approve a form of deed and to assist in closing it, and I think I went on and said, "Paul, there is a time when you get sick and tired of trying to give advice if it isn't accepted."

(Testimony of Kenneth Abraham.)

Q. Did anything else occur there in attorney Parker's office there that morning?

A. No, not that I recall.

Q. What did you do after that?

A. I went out of the side door of Mr. Parker's office and downstairs and over to the court house, and Mrs. Parker was sitting on the only bench which is in the lobby of the Hood River County Court House, and I said, "Here is the deed. What name do you [883] want to put on the grantee?" and she said, "Chet L. Parker," and I stepped behind the counter of the Assessor's office, pushed a deed into one of the several typewriters in the Assessor's office and typed in the name of Chet L. Parker. I think she stood on the other side of the counter at that time. Then she handed me the revenue stamps. I just picked up the revenue stamps of which there were quite a number and proceeded to paste them on. After I had pasted them on and was cancelling them, I added them, and I noted that they involved more than a hundred thousand dollars' transaction. I told her we had put too much in the form of revenue stamps on the deed. She said, "No, we purchased an option from Mr. Stegmann for \$25,000 so I don't think"—and I think I handed her the deed then and I said, "The next window over," a small court house, as you know, "is the Clerk's window. If you just hand it into the Clerk's window they will record it." Now I may be wrong in that. I might have taken and handed it into the Clerk's window myself, but I know she paid the

(Testimony of Kenneth Abraham.)

Clerk's recording fee. I did not pay it, and I also know that she took a receipt, and I know from the court house records that the deed was mailed to Mrs. Parker because at the time the receipt was made the Clerk asked, "To whom do you want the deed mailed?" and she gave the address at that time. The address I don't recall.

Q. After that what next was done?

A. Well, I think Mrs. Parker—I haven't thought about this [884] for a long time, and I think she paid me my fee either there or in my office, I am not sure which. That was the last I saw of her. I believe she paid me right there in the court house and that I went over to the office although she might have come over to the office and paid. I can't say for sure. That is the last, I believe that is the last I have seen of Mrs. Parker before I saw her in this court room a week or so ago, although I am not sure on that either.

Q. Was there any discussion between you and Mrs. Parker following your return from attorney Parker's office as to what Paul Winans had told you?

A. Oh, yes, I told her again about this defect, and I did tell her again. I told her about this defect and told her——

The Court: Tell us what you told her.

The Witness: All right, I said, "Mr. Winans has told me there was something wrong with this title, and you should be sure that you have title

(Testimony of Kenneth Abraham.)

insurance although this is a very late stage of the game to start looking for it," and she said, "We are satisfied with the title." I said "All right."

Q. How much of what Paul Winans told you about the title did you tell Mrs. Parker?

A. Well, I am not sure how much I told her. As I say, Paul Winans told me very little. He told me that he felt, for example, he started his conversation out, I will attempt to repeat it as best I can. He told me that if Mr. Stegmann had been here he [885] would have told him this, that he didn't think that we should record the deed now; that there was a defect in this title that could be cleared up by Congressional action but could be better cleared in the name of the Winans family than in his. Now, I think I substantially told her that, and he told me in a rather very general fashion. As I say, I was in a hurry to leave, but he told me in a very general fashion that this defect had arisen over some failure to issue a patent or in just about that term.

Q. When you told Mrs. Parker that did she say anything as to whether or not she had heard or knew of the defect or question that you pointed out to her?

A. I don't think that she did. As I recollect it, she seemed to be just satisfied with the title as it was, and that was the type of term that she used to me in those three different instances, the one of the night before, the one at the time of receiving the check, and the one when I returned with the deed.

(Testimony of Kenneth Abraham.)

She used approximately the same phraseology, in other words, "We are satisfied with the title."

Q. Had she at any time by the time she paid you your fee and left, had she at any time during the whole transaction while you were connected with it shown to you a preliminary report of title insurance on the Winans property? A. She had not.

Mr. Buell: We have no further questions, your Honor.

The Court: We will take a five or ten minute recess. [886]

(Afternoon recess taken.)

(Trial resumed.)

KENNETH ABRAHAM

recalled, testified as follows:

Cross-Examination

By Mr. Jaureguy:

Q. Mr. Abraham, are you acquainted with Mr. Chet Parker, Mrs. Parker's husband?

A. Yes, sir, I am.

Q. Had you done some legal work for him prior to the time that Mrs. Parker came in?

A. Well, I handled a transaction with a client of mine in Hood River by the name of Vaughn who has a log boom in the Columbia River, and Mr. Vaughn came into my office with Mr. Parker, Mr. Vaughn being my client, and asked that I prepare an agreement by which Mr. Parker would purchase

(Testimony of Kenneth Abraham.)

the rights to boom logs out of his area there. In other words, there was set aside a certain area in which Mr. Parker could put in logs, and there was a definite consideration at that time paid for that right, and the contract was drawn, sold it at a thousand or \$1500.

Q. What was being done was that Parker was purchasing a portion of a boom?

A. He was purchasing a portion of a boom, that is, it was more of a right to use the boom. In other words, the land there is flooded by the Columbia River, but the land is owned by Mr. Vaughn, and he didn't purchase the land or any title to [887] realty there. I suppose, in a sense it was the purchase, a lease purchased, that there may have been a certain time in that agreement. That I cannot recall.

Q. About how long was that before Mrs. Parker came into your office as you testified to?

A. I would not be quite sure, but I think it must have been some time in 1950 because in 1950 we sold three or four rights in that boom area there of Mr. Vaughn's. I think it was in 1950.

Q. That had been several months then before this?

A. Oh, yes.

Q. You did not on that occasion meet Mrs. Parker?

A. I did not.

Q. You had never met her up to the time that she came into your office as you testified to?

A. I had not.

Q. Mrs. Parker testified that when she went in

(Testimony of Kenneth Abraham.)

there you were not there, and she left her name with your secretary, she went in alone and left her name with your secretary. Do you know whether that might have been possible?

A. You have brought that to my attention here sometime ago, and I carry a book in my office in which we record everybody's name who comes into the office on every day, and I went back and looked in that book and did not find her name.

Q. Did you find Stegmann's name? [888]

A. I did not find Stegmann's name, either.

Q. You did not find either one of them?

A. I did not find either one of them.

Q. So that that day your girl was not on her job?

A. It could have been that they came in there after five o'clock or by the time the girl had left, or she just neglected handling it right.

Q. But the girl was there at the time?

A. She was there.

Q. Because she advised you they were there?

A. That is right.

Q. There was nothing in Mrs. Parker's attitude or appearance or anything that would lead you to believe that she was trying to conceal the fact of who she was, her identity?

A. Oh, no, none at all.

Q. Now the next morning when she came didn't she give you a carbon copy of a title report?

A. She did not.

Q. Did you ascertain the book and page in which the Koons mortgage was recorded?

(Testimony of Kenneth Abraham.)

A. Did I ascertain the book and page?

Q. Yes. A. I am not sure.

Q. Well, I asked you whether she handed you a copy of a title report. Do you know whether she had one in her hand, a copy of [889] a title report?

A. No, I did not see one. I would have recognized it because I am familiar with it.

Q. This was a tissue carbon.

A. I think I would have recognized it if it had been in her hand, but she didn't.

Q. Didn't she give you details of a mortgage and an extension, a mortgage and a mortgage foreclosure proceeding?

A. She gave me some details, that's right. I don't recall just exactly what they were.

Q. She couldn't come up—she must have had something in her hand?

A. Either that, or she was looking in her purse, but I didn't see any title report.

Q. You mean you didn't see any that you recognized as such? A. That's right.

Q. When you examined the deed you said it was a regular bargain and sale deed. One of the attorneys in this case has referred to it as a bargain and sale quitclaim deed. Have you ever heard that expression? A. That's right.

Q. Would you say this was a regular bargain and sale deed, as you recall, or bargain and sale quitclaim?

A. I didn't mean to say that. I told her it was a

(Testimony of Kenneth Abraham.)

type of bargain and sale quitclaim deed as you have suggested. In [890] other words, I pointed out to her it was not quite the form of bargain and sale deed, and I was in error when I mentioned that before.

Q. But, at any rate, you felt it was satisfactory?

A. I explained to her what the deed attempted to, purported to convey.

Q. That is the type of deed that the title company accepts; is it not, or have you had occasion to know that?

A. Well, we have used them.

Q. Yes?

A. I have used them in my office, and I know that other attorneys in the community have used them.

Q. You mean you have used them on cases where you have got title insurance?

A. That's right.

The Court: You said that you attempted to explain to her something——

The Witness: What the deed purported.

The Court: What did you tell her?

The Witness: Well, I told her that this deed—now I can remember I have not seen this deed since the day, or since the 11th, but as I recollect generally the deed, as I recall it, was an attempt to convey what right they had in there, if any, as contrasted to a bargain and sale deed in regular form which frequently employs a warranty of having an ownership interest [891] therein but does not warrant it to be free and clear of encumbrances.

The Court: What I am interested in is what

(Testimony of Kenneth Abraham.)

you told Mrs. Parker. Did you tell her that this merely conveyed the interest of the seller in the property without any warranties of the title whatsoever, or did you tell her that this was a conveyance of the property itself?

The Witness: I told her it conveyed the interest of the sellers without any warranties.

Q. (By Mr. Jaureguy): Well, you testified on direct examination that you told her it was a satisfactory deed; that is correct?

A. Well, that's right, but I should have corrected my statement on direct examination. I went ahead and explained to her, in other words, I took the deed, and I explained to her just what the terminology of the deed was, pointing out it was conveying what interest the sellers had in it.

Q. You say that you used those regularly in Hood River?

A. No, we do not use them regularly, but they are used on occasions.

Q. But you did not suggest to her she should send it back and get a different form?

A. Well, I told her what type of deed it was, that it was not warranting title, that it was conveying the interest that these people had in the property.

Q. But you did tell her it was satisfactory?

A. I told her it was satisfactory if she was satisfied with [892] that type of conveyance, and she told me that they were satisfied with it as long as that form was right.

(Testimony of Kenneth Abraham.)

Q. But on direct examination you said it was a regular form of bargain and sale deed?

A. Yes, I am sorry, I was wrong in saying that.

Q. The evening before, the first evening, you asked her about the name, who the grantee was, but didn't she tell you that she and her husband had not decided yet?

A. No, I think she said that she would tell me the next morning.

Q. Well, then, isn't it a fact that the next morning the subject was never broached until after you came back?

A. The subject was broached the next morning in the court house at the time she gave me the check. I asked her right then and there because I was going over to Mr. Parker's office to get the deed, and I knew that Mr. Parker didn't have the name of the grantee because I didn't have it, and I asked her then what the grantee was, and who the grantee was, and she said, "Get the deed, bring it back, and I will tell you."

Q. Well, aren't you getting confused between the conversation that took place the evening before and the conversation that took place on the morning after?

A. No, I do not think so.

Q. Whether or not that the evening before she had said she and her husband had not decided, but she would find out from her [893] husband and let you know?

A. I didn't recollect her saying that the night before.

(Testimony of Kenneth Abraham.)

Q. You do not recollect that. Now this conversation—you said she was there maybe 15 minutes and discussed many things? A. Where?

Q. Oh, I mean up in Vawter Parker's office is what I am talking about.

A. Yes, I think on direct examination I said five to ten minutes, and it could have been 15 minutes.

Q. At that time both you and Vawter Parker knew that she was Mrs. Chet Parker?

A. That is right.

Q. She did not try to conceal that?

A. No, sir.

Q. Now, this statement about Stegmann purchasing the property, don't you think that it might have been something like this, that she said that some little time before that she was at the Stegmann home or the Stegmanns were at her home, and they had a boy, and he was quite a lively little fellow, and that Mr. Stegmann said he thought—and the wife was having a baby, and that he said he thought maybe he had better take the boy and buy an acre up there near Lost Lake and tie him to a tree and maybe he could handle him better, something like that? A. No.

Q. You do not think that was said? [894]

A. No.

Q. Then when Mr. Winans came in and, as I understand it, the check was laid on the table, you got the deed, you got the refund check, and then he said to you that if Stegmann was there he intended to tell him if—that he believed there was some

(Testimony of Kenneth Abraham.)

defect in the title and that they were going to clear, and that they thought it could be cleared better in the Winans' name than in Stegmann's name?

A. Yes, sir.

Q. And that he would be glad to help clear it?

A. Yes, sir.

Q. I am wondering if he might have said something of this kind—I may say I am reading now from the opening statement of Mr. Buell, pages 31 and 2—"After that was done Paul Winans, advised Mr. Abraham that there was some defect in the title to the property; that he would be very glad to assist in whatever way he could in helping the Parkers to perfect the title as against the claim of ownership of the United States or as against claim of ownership by the Government." Could that have been what he said? A. No.

Q. You do not think he said that?

A. It was substantially what he said, except that I am quite sure he didn't use the name Parker.

Q. He didn't use the name Parker? Did he refer to the defect [895] as anything serious or as a technicality, or was something in it?

A. He did not refer to the defect as being serious. He felt that the defect was one which could be corrected.

Q. Did he indicate that it was more technical than real?

A. I would say that he indicated it was more technical than real, yes.

Q. Now, you remember when I was talking to

(Testimony of Kenneth Abraham.)

you not very long ago? I think I visited your office once. I think I have talked to you at least twice on the telephone. A. That is right.

Q. Did you not tell me the last time I talked to you that you had no recollection of telling Mrs. Parker after you got back about this statement that Mr. Winans made? A. That's right, I did.

Q. And also Mrs. Parker visited you sometime, oh, after these difficulties happened, and you told her that you had no recollection of telling me; that is correct?

A. I don't know about Mrs. Parker. I can hardly recollect Mrs. Parker coming into the office again. I think I felt she had. You may recall that I thought so on direct examination. I did tell you when you talked to me on the telephone. I had forgotten. I went back into the various notes that I had made and the notes that other attorneys had taken from me, one of which was taken within six weeks after the transaction, and at that [896] time I was able to clearly recollect that I had told Mrs. Parker about this transaction after I came back from the court house, and on refreshing my memory I recall that I had.

Q. You told me, I think, that when Mr. Vawter Parker went back to Hood River a couple weeks ago and told you that Mrs. Chet Parker had testified that you told her that, that you were astounded?

A. Well, I was surprised, and I could not remember.

(Testimony of Kenneth Abraham.)

Q. Mr. Buell was up to see you, oh, sometime in 1951 and interviewed you on this matter; was he not? A. Yes, sir.

Q. Would you tell us about when that was?

A. Oh, it was before Christmas, I think.

Q. Would you say it might have been the first few days of October, might have been that early?

A. It could have been in October.

Q. At that time did he tell you that the Title and Trust Company were suspicious that the Winans and the Parkers had conspired to put one over on the Title Company?

A. I would not say for sure that Mr. Buell had said it, but I think it, that that suggestion was made in the general conversation either in my office or on the street corner later.

Q. That is, in a conversation between you and Mr. Buell, you mean?

A. Between myself and Mr. Buell. There was someone else with [897] Mr. Buell. I cannot recall who it was. It might have been Mr. Altstadt.

Q. That is, it was somebody connected with the Title and Trust Company, as far as you know?

A. I think there was a couple people with him, oh, yes, Mr. Miller, the local manager, was with Mr. Buell at that time, the local manager of the Title Insurance Company.

Q. One of them, either Mr. Buell or somebody else connected with the Title and Trust said that they believed that the Winans and the Parkers had conspired to put this over on the title company.

(Testimony of Kenneth Abraham.)

A. I would not say for sure, Mr. Jaureguy, that they said they believed, but they were considering it as an element in the case to investigate.

Q. I suppose that Mr. Buell told you that Mr. Francis Marsh who was then the attorney for Mr. Parker had said it was perfectly all right for him to interview you? A. I do not recollect.

Mr. Jaureguy: That will be all.

The Court: Mr. Ryan?

Mr. Ryan: No questions.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Abraham, do you recall telling Mrs. Parker after you [898] had brought the deed to her and had filed in the name that, something to this effect, that there was a technicality in the title according to Mr. Winans, but that you considered it a small thing and not to pay any attention to it?

A. I most assuredly did not because I was not aware of what the technicality was other than a very slight description on it, and I was not going to pass an opinion on that title under the circumstances of which by that time I was more than unhappy about.

Q. You gave her no view of your own?

A. I gave absolutely no——

Q. As to the validity of this defect?

A. I absolutely did not. From the time that I discovered the \$95,000 check I was very cautious about this thing.

(Testimony of Kenneth Abraham.)

Mr. Krause: That is all. Thank you.

The Court: Mr. Buell?

Mr. Buell: If the Court please, we have no further questions, but at this time, since counsel has taken the liberty of examining me in my opening statement, I would like to most assuredly assure the Court that I did not intend to represent to the Court that we were going to prove what in this case Mr. Jaureguy read. I think the Court understands that.

Mr. Jaureguy: I quoted you correctly, I mean.

Mr. Strayer: I want to say in that regard I caught the error when it was made and tried to tell Mr. Buell about it, and he didn't understand me when he was making the statement. [899]

The Court: Very well, proceed, Mr. Jaureguy.

Cross-Examination

By Mr. Jaureguy:

Q. I think that you told me once that you and Mr. Vawter Parker, when the story came out in the newspapers, got together and discussed the matter, you said, to refresh your respective memories as to what happened over in his office?

A. Oh, Mr. Parker and I have had discussions over this matter, not entirely lengthy at all.

Q. No, I know, but for the purpose of comparing your notes as to what happened?

A. Oh, we have compared some notes. I don't think we ever went into it in detail. We rode down

(Testimony of Kenneth Abraham.)

in an automobile from Hood River today and didn't discuss our testimony once in this entire case.

Q. I was not referring to that, and I certainly am not criticizing anybody, but I understood you to say that shortly after this event happened you and Mr. Vawter Parker got together and discussed your respective recollections of what did happen so that you could decide just——

A. We did have discussions about the matter, that's right, Mr. Jaureguy.

Mr. Jaureguy: Yes, that is all.

Examination by the Court

Q. Would you think that a man who told you that it was necessary [900] to have Congressional action to clear up a defect was representing that the defect was merely technical?

A. Well, I think that in saying "technical" I was using his own term. I did not have any opinion at all with regard to the nature of the defect or whether it was substantial or not substantial.

Q. Did Mr. Winans tell you that after you had paid the money and gotten the deed?

A. To the best of my recollection, it is my recollection that he did. I have discussed that point with Mr. Parker in trying to determine whether the conversation took place after the deed and money was passed, and it is mine that it did, that the conversation occurred after I had the deed in my hands. I know that I was standing preparatory to leaving the room.

(Testimony of Kenneth Abraham.)

Q. When you found out from the representative of the grantor that there was a defect in the title did you not get concerned; did not that concern you?

A. It concerned me considerably. That is the reason I brought it to the attention of Mrs. Parker.

Q. Did you ask Mr. Vawter Parker not to disburse the funds until you had had an opportunity to talk to Mrs. Parker? A. I did not.

The Court: That is all. [901]

Cross-Examination

By Mr. Jaureguy:

Q. As a matter of fact, your check was deposited in the bank that very day, wasn't it?

A. I have not any way of knowing. You see, I was quite sure that there was title insurance involved in this thing because they had given me a certain date which, to check back on the record, and giving that indicated to me that they had had title insurance.

Q. Are you quite sure that she didn't actually tell you they had title insurance?

A. I am quite sure she didn't actually tell me they had title insurance.

Q. From what she did tell you, you were quite satisfied that they did?

A. Yes, I might add one thing. I didn't say in my conversation with Mr. Parker when I went to Mr. Parker's office from the court house with that check, I asked Mr. Parker, as I recollect, whether

(Testimony of Kenneth Abraham.)

these people had title insurance. He said he didn't know either, but he did know that they had had the property surveyed and that they were not going into this purchase blind.

Q. Did you get the impression from that that he had the opinion that they had title insurance?

A. I got the impression from that that he had the opinion that they might have title insurance, yes. [902]

Q. That is all.

The Court: Any further questions of Mr. Abraham? That is all.

(Witness excused.) [903]

VAWTER PARKER

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Vawter Parker, and you also are a practicing attorney at law with offices in Hood River, Oregon; is that correct, sir?

A. That is right.

Q. How long have you been practicing in Hood River, Mr. Parker, approximately?

A. Since January, 1946.

Q. In connection with this sale of that Winans' Lost Lake property, you represented Mr. Paul Winans, right? A. Yes.

(Testimony of Vawter Parker.)

Q. Do you recall approximately when it was that Mr. Winans first consulted you relative to this proposed sale?

A. Sometime after the middle of August, I think about the 17th or 18th of August, 1951.

Q. What did Mr. Winans tell you on that first occasion that he wanted you to do in connection with this sale?

Mr. Jaureguy. I want to object to any of this testimony insofar as it might be offered as against the Parkers.

The Court: That is right, this is admissions against interest against the Winans. [904]

Mr. Ryan: Object to it on the same basis as to Stegmann, I assume.

The Court: Yes.

The Witness: Mr. Winans called and stated that he wanted to sell some land which the Winans had up around Lost Lake and wanted me to draw a deed for them, and after that there was some discussion concerning about who would sign the deed, and I looked at the title, did some checking on the title and also at one time there was discussion concerning about income tax on the sale, and I suggested to him that he contact his accountant and take that problem up with him, and afterwards he did bring his accountant into the office and we discussed the matter with the accountant one day between the first time I saw him and the time when I first met Mr. Stegmann.

Q. Now, when was it first brought to your at-

(Testimony of Vawter Parker.)

tention, Mr. Parker, that there was some question as to the title of Ethel Winans to the 40-acre tract that was covered in this transaction?

A. Sometime between the first time I saw Mr. Winans about this and the time that Mr. Stegmann came in. The exact date I can't remember.

Q. Can you definitely state whether or not you knew of this possible title question before you first met Mr. Stegmann? A. Yes.

Q. Do you recall when the date was that you first met Mr. Stegmann? [905]

A. It was the Saturday—it was a Saturday morning. I believe the date was September 8th. I would have to check that on the calendar, but it was—my meetings with Stegmann were on a Saturday and on a Monday following that.

Q. Were those the only two occasions that you ever saw him?

A. Only two occasions during that year until I happened to see him here in Court about a week ago.

Q. You recognized Mr. Stegmann in Court then?

A. Oh, yes.

Q. All right, then, bringing this up to this September 8th meeting, was that a pre-arranged meeting by appointment, or was it one where they just happened to drop in your office on Saturday, the 8th, or do you recall?

A. I don't recall, but I believe that Paul had told me, Paul Winans had told me or called me and asked to have an appointment that morning.

(Testimony of Vawter Parker.)

Q. Then when—who arrived that morning on on September 8th?

A. Paul Winans and Walter Stegmann and a man by the name of Haines or Hayes. I believe he was a surveyor.

Q. What took place at that meeting?

A. They came into the office, and there was discussion concerning the description to be used, the land to be conveyed and description used, which was particularly concerning an excepted portion which was to be saved out of that portion which was near to the lake, and also at that time there was some discussion, [906] first discussion in which I was around in which—as to the title of this, part of this land.

Q. How long did that first meeting take place?

A. Well, it started, as I remember it, it started in the morning and we were having a little trouble with a survey. I believe that they went back over to the City Hall. They had made arrangements at the City Hall to use the Engineer's office at the City Hall to plot out this excepted portion, and I think that particularly Mr. Haines and Mr. Stegmann and, I think Mr. Winans went back over to the City Hall because I was busy that morning and I know I went over to the City Hall some time that day, talked to one of them for a few minutes, and then they came back over to the office, and we came back Saturday afternoon.

Q. Can you recall or state what time during the

(Testimony of Vawter Parker.)

day you first started that actual process of preparing a draft of the deed?

A. It must not have been until that afternoon because I think they were still working over there at the Court House, I mean at the City Hall, on a description. They may have got it back before noon, but it seems to me it was more that afternoon.

The Court: Is the City Hall open on Saturday?

The Witness: The City Hall is open on Saturday morning, sir, and on that afternoon we made arrangements, I believe, for them to use the office there of the City Engineer.

The Court: Were you looking at maps of this particular area? [907]

The Witness: No, they had a map, I believe, they had a map, and they had to come around the edge of the lake, kind of a dogleg around the edge of the lake on the various meanders to bring it down to a point to where they were going to take off this excepted portion.

The Court: Well, would the City have a map of this area?

The Witness: No, they did not have, sir, but they have the facilities there where they could on the map, where they could plot it out. I think that is what they were doing. As I remember, I was over there, and at that time they had their large map out on the table there in the City Engineer's Office. I don't know whether the City Engineer had a map. I doubt if he would have of Lost Lake.

Mr. Buell: Was there any discussion during the

(Testimony of Vawter Parker.)

course of that, of the day of the 8th, as to the form of the deed aside from the question you were having about a description? Was there any discussion of the form of the deed as to the kind of a deed or type of deed that it was to be?

A. I think at all times it was discussed it was only to be a deed conveying the interest of the Winans in that property. It would not be a warranty deed. It would be a bargain and sale deed of their interest.

The Court: Tell us what you told him, though, about the title. You mentioned that earlier. What did you tell Mr. Stegmann about the title that [908] day?

The Witness: What I told Mr. Stegmann?

The Court: Yes.

The Witness: I don't know whether I told him except in connection with this deed why they could not give a warranty deed, that there was—this defect about it. Mr. Winans discussed it more with him than I did as to what the nature of this defect of title of the Winans was anyhow. The only discussion that I had with Mr. Stegmann would have been as to why we were giving this kind of a deed.

The Court: What did you tell him?

The Witness: Well, they could only sell what interest the Winans had in the property.

The Court: Did you have any discussion with reference to the apparent defect in the 40-acre tract?

The Witness: In the back 40-acre tract, yes, I

(Testimony of Vawter Parker.)

can't remember the exact wording, but we discussed that there was a defect in the back.

The Court: Were you present at the time that Mr. Winans was talking to Mr. Stegmann concerning the nature of the defect on the back forty?

The Witness: Not altogether, yes, well, they were in there, and I was working on it, and there was discussion between them as to the exact defects on the back forty.

The Court: Did you hear it?

The Witness: Yes, I did, sir. [909]

The Court: Do you recall what Mr. Winans said to Mr. Stegmann?

The Witness: The exact words I don't remember, but it was because that the land had not been cleared by the Federal Government although it was in a school section. It was not cleared by the Federal Government.

The Court: What did you tell Mr. Stegmann concerning the nature of the deed which the Winans would execute, Mrs. Winans would execute?

The Witness: Well, she could only execute a deed conveying what interest she had in the property.

The Court: Did you tell him that this was merely a quit claim deed or a bargain and sale deed?

The Witness: I don't believe I used the word "quit claim" because there is a slight difference in my mind as to what a quit claim deed is, but I did tell him it was a bargain and sale deed of what her interests were in the property.

(Testimony of Vawter Parker.)

The Court: Did you also tell him that the reason you were giving him that type of deed was that there was a defect in the back forty in the title?

The Witness: Because of this defect that he and Mr. Winans discussed was the reason for giving him that type of deed.

The Court: How long did this conversation with reference to the defect in the title last, or how many conversations did you have on that day with him concerning that? [910]

A. Well, there was some discussion on Saturday concerning this defect in title although the main portion of time on Saturday was taken up with a description around the lake and drawing the description and this excepted portion. It was on Saturday it was discussed in there first, and then it was discussed again on Monday.

The Court: I am going to let Mr. Buell take over the Monday discussion.

Q. (By Mr. Buell): I want to cover a couple other things on Saturday, your Honor.

Was there any discussion Saturday, Mr. Parker, as to whose name was going to be inserted as the grantee in the deed?

Mr. Jaureguy: I want to still renew the objection as far as the Parkers are concerned that it is not admissible.

The Court: It is understood that all these conversations that took place outside the presence of Stegmann or Parker or either of them are only binding on the defendant Winans.

(Testimony of Vawter Parker.)

Mr. Buell: Well, if it please the Court, I am referring to discussions of attorney Parker with Mr. Stegmann.

The Court: Well, then, of course it binds Mr. Stegmann, and it would bind Winans also because there is no question that Mr. Vawter Parker was representing the Winans.

Mr. Buell: I think it would also bind the Winans in the event——

The Court: If you establish that Stegmann was an agent of [911] Parker, obviously it binds the Parkers.

Mr. Jaureguy: Then that causes me to make the objection that they have not established that, and, therefore, it is not yet admissible.

The Court: It is certainly admissible against the Winans.

Mr. Jaureguy: Oh, yes, yes, I know that is correct. I beg your Honor's pardon. I meant it won't against the Parkers.

The Court: Go ahead.

Mr. Buell: Was there any discussion on Saturday, September 8th, as to whose name was to be inserted as the grantee in the deed?

Mr. Ryan: Object to that to the extent that it should be shown that Mr. Stegmann was present or not.

Mr. Buell: In Mr. Stegmann's presence.

The Witness: The exact day, whether it was Saturday or Monday that the discussion came up concerning the name that I asked there that day,

(Testimony of Vawter Parker.)

that is, for the first time as to whose name would be in there, I believe, was Saturday, but it may have been Monday that Mr. Stegmann said that he might take it in his son's name and to leave the name blank, and then either on Saturday or Monday it got down to the point where we had to know whether it was going to be plural or singular or whether a man or woman, and I asked him that. He said to still leave it blank, but it would be—I believe he said at that time it would be a man, and maybe that was the time that he stated he might take it in [912] his boy's name.

Q. Did you prepare any copies of the deed which were turned over to Mr. Stegmann which contained the name or part of the name of any person in the grantee's space? A. Yes, I think I did.

Q. What copy was that, and what name was inserted in it?

Mr. Jaureguy: Object to that, and an additional objection, it is not the best evidence. Same objection I made before and this in addition.

The Court: Is that document in existence, or do you want to show it is unavailable?

Mr. Buell: I will ask him about that.

Do you know where that document is with the name of a grantee marked in it that you just referred to?

A. Well, at one time I did have it. I don't know whether it is still in the office or not. It is just a yellow tissue copy that I had.

(Testimony of Vawter Parker.)

Q. Do you have a copy of it, Mr. Lindsay?

Mr. Lindsay: Yes.

Mr. Buell: Is it marked?

Mr. Lindsay: Is it marked? No, it is not here. It is down to the office.

The Court: Well, objection sustained.

Mr. Jaureguy: I will withdraw the objection if the two counsel will agree that it will be brought up here later. [913]

Mr. Buell: That is perfectly agreeable.

The Court: Do you have any objection to offering it?

Mr. Lindsay: None whatsoever, your Honor.

Mr. Jaureguy: I mean I withdraw this additional objection.

Mr. Buell: That is not the best evidence?

Mr. Jaureguy: That is right.

Q. (By Mr. Buell): Whose name or what name was in the copy of the deed that you prepared?

A. Stegmann.

Q. His full name or——

A. No, no, it was blank, and then it said “Stegmann” in it.

Q. Do you recall when that copy was prepared?

A. Well, I think that copy was prepared on Saturday.

Q. Was that given to Mr. Stegmann?

A. Well, there were about five or six copies of this deed prepared over those two days, and whether he received a copy of that deed I don't know because from time to time—at least he saw it, I will

(Testimony of Vawter Parker.)

say that. I am pretty sure he saw it because he would take it and examine it, and I presume was checking it with somebody. That is just presumption on my own part.

Q. Then, still referring to Saturday, the 8th, do you recall about what time of the day your meetings broke up?

A. Well, no, but they lasted pretty much far along Saturday afternoon, as I remember it.

Q. Did Mr. Stegmann leave before Mr. Winans did on Saturday; [914] do you remember?

A. I couldn't say who left first. I kind of imagine that Mr. Stegmann did because sometime along on Saturday afternoon, after we had had some—there had been some more discussion concerning this deed because we were changing the description and the wording in the deed, and the question came up about the payment, and I found out that Mr. Stegmann was just going to give us his check for \$95,000, I think it was, or whatever the amount was still due.

Q. Who said that?

A. Well, it was either Mr. Winans or Mr. Stegmann. At least they were both present, and they both agreed that that was going to happen, and Mr. Stegmann was going to give a check, and I objected to giving that check, just a straight out check. He was just going to give a check on the bank of McMinnville, I believe.

Q. Was Mr. Haines present at all of the conver-

(Testimony of Vawter Parker.)

sations that were held in your presence on Saturday?

A. Mr. Haines, the surveyor?

A. The surveyor, yes.

A. I don't believe he was because, if I remember it, he went over to the City Engineer's office and he worked over there part of the time, so he may not have been in our office all the time when Mr. Stegmann and Mr. Winans were present.

Q. But he was there part of the time?

A. He was there part of the time. [915]

Q. Then on Monday, what happened on that day? When did you first get together and who was present?

A. On Monday it was just Mr. Stegmann and Mr. Winans. Mr. Haines, I don't believe I saw him again.

Q. Did any additional difficulties develop on Monday?

A. The time element was a little bothering, but I think on Monday was the time that the matter of additional lands to be excepted came up. Now, I am not too sure of the exact time of that, but I am pretty sure that occupied quite a bit of the share of our time on Monday.

Q. Were both Mr. Stegmann and Mr. Winans present when that was being discussed?

A. Oh, yes.

Q. What was the discussion about the additional reserved area?

A. Well, they wanted to take out some more lands to be reserved for the Winans, and I can't

(Testimony of Vawter Parker.)

remember how it looked on the plat as they worked on it, but, anyway, there was more land which was to come out, and that also affected the amount of the price which was to be paid.

Q. Was there any agreement reached as to what the price was to be paid for the additional reserved acreage?

A. Well, it was determined between Mr. Winans and Mr. Stegmann. They computed that on—worked out some basis for computing the additional price.

Q. Do you remember what the basis was or how it was arrived at? [916]

A. Well, it was with relation to the value on the, proportion on the lake frontage there because it was all on the lake frontage that they were going to except the piece of land out.

Q. Had there been any discussion between Mr. Stegmann and Mr. Winans in your presence as to a separate valuation for the 25-acre tract as distinguished from the back forty?

A. Prior to that time I don't remember whether they discussed it, but at that time they used different valuations to determine the valuation on this particular extra frontage that was going to be retained by the Winans.

Q. Do you recall what those valuations were?

A. The exact figures, no, I do not.

Q. To refresh your recollection, it is admitted by all the parties here that the amount of the refund for the additional reserved area was \$4,750.

(Testimony of Vawter Parker.)

A. Oh, yes, I recollect that. I mean, I know that was the amount of it.

Q. But you say you cannot recall exactly what the formula was that resulted in the \$4,750?

A. They worked it out because that day I was rather busy, and they worked in my office there most of the time.

The Court: Who is "they"?

The Witness: Mr. Winans and Mr. Stegmann, and, as I remember, because I did not make it out for them, they worked it out, it was based on the additional land which was being taken on the [917] lake frontage and a value based on the lake frontage land.

Q. Now, was there any additional difficulties that arose as to the description of this reserved acreage on Monday? Would it help you to see a copy of the deed to refresh your memory in that connection?

A. Well, as I remember it, the description of the plat as I saw the plat rather than as I saw the description in the deed, but the original description from my memory started at the—the lot next to the lake is Lot No. 1; is that right, or is that Lot No. 2?

Mr. Buell: Lot No. 1.

The Witness: All right, down in the southeast corner, I believe it would be, if I see a map, where the original description came out, and then it moved over to a place on the shore of the lake, and when they changed it they moved farther north along this, I believe it would be the west line of Lot 1.

(Testimony of Vawter Parker.)

I think there is a little creek runs down there, and it had some relation to this creek that comes down there, that they moved over to make this new description that involved the change in the description and the additional area which Winans was going to retain. I do not have a map before me, but I can point it out to you on the map.

Q. Well, then, on Monday was there any discussion about calling in outside assistance or having somebody else check the description that you were preparing to see whether or not it was [918] satisfactory?

A. Well, we were having quite a bit of trouble going around this lake, and we had this on Saturday also to follow around the edge, and I believe they said there had been a surveyor up there, that they had surveyed around this edge, but they didn't know, were not always sure where the edge was at, and the fact that the dam which was placed in the creek that drains Lost Lake had caused the water to raise slightly, and the boundary might have been changed, so I suggested that I go down to the Title and Trust Company and ask them if they had a plat. They have some photostatic copies of some of the early surveys there, and I thought that would be a simple way for us to reach this point, and Mr. Stegmann was at that time objecting to my going down there very strenuously. He didn't want me to go down to the Title and Trust Company office.

Q. Can you recall his words he used at all in that connection?

(Testimony of Vawter Parker.)

A. The words I can't remember. I cannot remember what words he used to me, but he didn't want me to go down to the Title and Trust Company to check the title or to talk to them about it.

Q. Did he say, did he give you any reason for it?

A. No, I can't remember that he gave any reason. He just objected very strenuously to my going down there.

The Court: Going down to check the title or the description?

The Witness: Not to check the title, but to check this description. I wanted to get this plat that the Title and Trust [919] had.

Q. Then did anything else take place on Monday, other than the two incidents that you have related about going to the Title and Trust Company and working out the price of the reserved area?

A. Well, I think it was on Monday that I first began to notice that when we would work out a description, why, Mr. Stegmann would disappear with it and either, for some reason or other, he would find some reason, why, then he would take a copy of the description and disappear, and then he would come back within a short time, and we would work out—sometimes we would change the description; sometimes we didn't make any particular change as far as I could see.

Q. Was there any discussion on Monday about the defect in the title and about the kind of deed that the, that was to be given by the Winans?

(Testimony of Vawter Parker.)

A. Well, it was on Monday, I am pretty sure it was Monday afternoon or sometime Monday, that Mr. Winans brought in a little slip of paper on which he had a statement which he wanted Mr. Stegmann to sign, that he acknowledged that the United States had some claim in the premises.

The Court: On what day?

The Witness: I am pretty sure that was on Monday that he had that. It was a little typed-up slip of paper that Mr. Winans brought in. It might have been Saturday, but it seems to me it was Monday that Mr. Winans brought that slip of paper, and he [920] tendered it to Mr. Stegmann and wanted him to sign it.

The Court: Had you read the slip of paper before it was handed to Mr. Stegmann?

The Witness: As I remember it, at the time that I first saw the slip of paper was when they were both in there. I may have seen it before, but it isn't—I don't remember, I didn't draw it nor it was not at my suggestion.

Q. (By Mr. Buell): Do you know where that document is? A. No.

The Court: Isn't there one here?

Mr. Lindsay: Which one is that? That is that agreement?

Mr. Buell: Yes.

Mr. Lindsay: Yes.

Mr. Buell: Has that been marked?

Mr. Lindsay: That is 311.

Mr. Buell: Number 311,

(Testimony of Vawter Parker.)

Q. The crier has just handed you what has been marked for identification as Third-Party Defendant's Exhibit 311. Can you identify that, Mr. Parker?

A. The wording of it I recognize, yes. Whether this was the exact piece of paper I don't know.

Q. May it be said that you can state for sure that you read it yourself prior to the time it was handed to Mr. Stegmann by Mr. Winans?

A. No, I couldn't say for sure whether I had read it before or [921] not.

Q. What did Mr. Stegmann say when Mr. Winans asked him to sign that agreement?

A. Well, he refused to.

Q. I omitted something there. You said you could not identify that as an exact piece of paper, but that you recognized the language in that exhibit. Is that the language that was in the document that was tendered to Mr. Stegmann by Mr. Winans?

A. Yes, this is the same general text that was in that document.

Mr. Ryan: Object to this line of testimony at this point. I don't believe it has been established that he said he was present when this happened.

The Court: He testified that he was there with Stegmann and Winans at the time this discussion took place. I think it has been established, certainly testified to by Mr. Winans, that he tendered this exhibit to Mr. Stegmann for signature. Go ahead.

Q. (By Mr. Buell): What did Mr. Stegmann say to it when——

(Testimony of Vawter Parker.)

A. I don't remember his words, but he refused to sign it.

Q. Was your advice sought by either party as to whether or not it should be signed?

A. Well, not by Mr. Stegmann, but there was some discussion with Mr. Winans right there in Mr. Stegmann's presence.

Q. What did you tell Mr. Winans with regard to the necessity of having that document signed?

A. Well, I went to him with this deed which we were giving which [922] was—in the meantime, the first deed was a—the first deed that we discussed, I think the first time I was in there, was the deed which was a strictly bargain and sale deed, and sometime in this time we changed from a bargain and sale deed, which would be bargain and sale of two lots, to a bargain and sale of all of her interest in the two lots, and I pointed out to Mr. Winans in Mr. Stegmann's presence, being as the deed was changed this way, that we had changed the wording of the deed; that if he didn't sign that we were not warranting the title anyhow under the deed that we were giving.

Q. That is, would not be necessary for him to sign that Exhibit 311?

A. Well, it was not an absolute necessity because the deed was worded in such a way that it only conveyed what interest she did have.

Q. Did you ever follow Mr. Stegmann when he left your office taking a copy of the deed with him at any time during this transaction?

(Testimony of Vawter Parker.)

A. I don't know as I followed him, but I went downstairs one time when he went down, and I think I saw him stop at a car down the street down there.

Q. Was anybody in the car?

A. There was somebody in the car, yes.

Q. Did you observe whether it was a man or a woman?

A. Just seems to me it was a woman, but I would not tell you [923] for sure.

Q. Could you state whether that was on Saturday or Monday?

A. I can't remember which day it was on. I am a little bit inclined to think—well, I thought it might have been Monday but I couldn't be sure.

Q. Was it the last time that you had occasion to see Mr. Stegmann, or was it earlier in the day, if it did happen to be on Monday?

A. I think—I am just telling you my own memory now—that I saw Mr. Stegmann again that day that it happened.

Q. Do you recall when it was that the final draft of the deed was satisfactory as to form to Mr. Stegmann was prepared on Monday?

A. It was prepared Monday afternoon, late.

Q. How late in the afternoon?

A. Offhand, I would say around four o'clock.

Q. What did Mr. Stegmann say, if you can remember, the last time or as he left the last time Monday?

A. I didn't remember, didn't know it was going

(Testimony of Vawter Parker.)

to be the last time I would see him. He just said he was taking this deed. He wanted a copy of the deed. He wanted to take it out and check it, and he left, and I think that is the last time I saw him that time.

Q. What happened next?

A. I don't know whether Miss Winans came in to sign the deed [924] then, or whether I had a telephone call from Mr. Abraham, one or the other—I can't remember.

Q. Could you give us any idea as to how long a time expired between the time Mr. Stegmann last left your office with the copy of the deed, and the time that Mr. Abraham called?

A. It was a very short time. I don't remember.

Q. Then you made your arrangements with Mr. Abraham to close the sale the following—

A. Mr. Abraham called me, I believe he called me, and it was getting late and we arranged that we would close the sale the next morning.

Q. Then when Mr. Abraham arrived the next morning, he has testified that there was some delay, and I wonder if you could explain what the reason was for the delay in closing the transaction after he arrived at your office?

A. Well, I believe that they were supposed to close it around nine o'clock in the morning, the next morning, and Mr. Winans didn't arrive. I think the first person who arrived that morning was Mr. Abraham, and Mr. Abraham came into the office and we had some general conversation, including the

(Testimony of Vawter Parker.)

amount of money which was to be involved and particularly the amount of the refund which I was—or which was to be paid back to the purchaser.

Q. Did you know what the refund was at that time? A. I think I did.

Q. What was the necessity then, if any, for waiting for Paul [925] Winans?

A. Well, I wanted to be sure as to the amount of the refund because I just heard it discussed there that night before. Another thing is, somebody was going to want some assurances of making this refund that we would be properly reimbursed for the amount of money we were going to put out on it.

Q. Did Mrs. Parker come into your office sometime?

A. Yes, after Mr. Abraham was there for some little time, why, Mrs. Parker came in. I mean, it turned out to be Mrs. Parker. Either she introduced herself or was introduced as Mrs. Parker.

Q. Mrs. Chet Parker. Was that the first time that you had ever met her?

A. Yes, that was the first time that I had ever met her.

Q. Was it the first time that you had ever heard of her by name?

A. I was introduced to her as Mrs. Parker. I didn't even know she was Mrs. Chet Parker, and I don't think there was any discussion as to her name. She either said she was Mrs. Chet Parker or Mr. Abraham introduced her as Mrs. Chet Parker, one or the other.

(Testimony of Vawter Parker.)

Q. While she was there, what did she say that you recall?

A. There was some general discussion about this—I think we mentioned this piece of property that she said—at least I got the impression that she was, seemed interested in this property. In fact, I got the impression before she left there that, some way, that she was at least advancing the money or had something to do [926] with the money which was coming on this property.

Q. What caused you to get that impression?

A. Well, whether it was because Mr. Abraham had informed me that that was the lady from whom he had received the check or not, I don't know, but because she was interested in having Mr. Abraham check this deed, I felt that she was interested in the property, and I was under the impression that she was backing Stegmann. I don't know where I got that impression.

Q. Was anything said as to who was purchasing the property while she was there? Did she make any statement as to who was purchasing the property?

A. Whether she made a direct statement that Stegmann was purchasing the property, I don't know. I had an impression that Stegmann was still purchasing the property but that she was backing him or represented someone who was backing him.

Q. When was the first time that you learned that

(Testimony of Vawter Parker.)

Chet Parker was the person whose name had been inserted as the grantee in this deed?

A. I believe it was when Kenneth Abraham called me and told me whose name was inserted in the deed. Then I went over and checked the Court House, checked it myself.

Q. Now, had you ever heard the name of Chet L. Parker in connection with the purchase of the Winan's property at any time prior to the time that Mr. Abraham called you after the deed had been delivered and the time you just mentioned? [927]

A. Well, I believe that during the discussion between Mr. Winans and Mr. Stegmann, that I may have heard that Mr. Parker had been up there with them, and I think that Mr. Winans had once discussed with me, certainly incidental to this, some financing that Mr. Parker or some friend of his was going to do for him, but the name Chet—in fact, I don't know whether I connected Mrs. Parker when she was introduced was with Chet L. Parker that they had mentioned before.

Q. When you had heard of Mr. Parker as having been up on the property with Mr. Winans and Mr. Stegmann, was his name mentioned to you as a person having an interest in the purchase of the property?

A. No, I had heard him mentioned as a man who had made this survey work up there on this survey with Mr. Stegmann and Mr. Winans.

Mr. Buell: We have no more questions. Thank you. I would like to offer Exhibit 311.

(Testimony of Vawter Parker.)

The Court: I think it has been admitted already.

Mr. Jaureguy: We make an objection. It is not in any way binding upon the Parkers.

The Court: It may be admitted.

(Document, Memorandum of Agreement between Paul Winans, agent and trustee, and Walter Stegmann, buyer, heretofore identified as Defendants' Exhibit 311, was received in evidence.) [928]

The Court: Of course, so far as the Parkers are concerned, it would only be binding on them in the event that we find agency. Mr. Jaureguy, go ahead.

Cross-Examination

By Mr. Jaureguy:

Q. You say you had the impression that Mrs. Parker was interested in the property?

A. As backing Mr. Stegmann.

Q. Why would you say that she was backing Mr. Stegmann, rather than——

A. Buying it outright?

Q. Some other interest in which each of them might have?

A. Well, I had understood some way that Mrs.—I mean, Mr. Stegmann and this lady who was evidently, who was Mrs. Parker, introduced as Mrs. Parker when I met her, were the ones who—I mean Stegmann was purchasing the property, but she was some way checking him on the description or on the title.

(Testimony of Vawter Parker.)

Q. Who gave you that impression? Was that something that Mr. Winans told you?

A. No, no, because—I don't know as I ever discussed it with Mr. Winans until after Mrs. Parker left, whether there was ever even such a person as Mrs. Parker.

Q. You say you don't know whether you did?

A. I doubt if I did because I didn't know there was a Mrs. Parker until that, it must have been Tuesday morning. [929]

Q. Do you remember Winans making a statement to Mr. Abraham about some defect?

A. Yes, I did.

Q. A technical defect.

A. About defects on the title?

Q. Yes. A. Yes, I do.

Q. Is the testimony of Mr. Abraham the way you recall it, too?

A. As I remember it, that morning while we were there, I don't remember whether Mr. Abraham had picked up the deed off the desk or not, but the check, I am pretty sure, was still laying on the desk; was when Paul Winans started to tell him about the, that there was a defect with that which he thought the Winans family were in a better position to get corrected than any stranger.

Q. Did he refer to it as technical?

A. I don't know whether he referred to it as technical or not, but one of us made the, made some sort of a statement about a Congressional act or an act of Congress or something to straighten it out.

(Testimony of Vawter Parker.)

Q. Well, I take it that you do not need to be told that a Congressional act of Congress may clear up defects that are technical and also defects that are not technical? A. That is right.

Q. So that fact would not convince you it was technical, that fact alone, I take it, but do you recall whether Mr. Winans [930] referred to it as a defect which he regarded as technical?

A. I do not know whether he used the word "technical," no.

Q. You say you don't recall whether Mr. Parker had the deed in his pocket or——

A. You mean Mr. Abraham?

Q. Whether Mr. Abraham had the deed in his pocket or in his hand at the time?

A. No, I was not at the discussion which occurred that morning. Whether he had picked up the deed or not, I couldn't tell you.

Q. That was after Mrs. Parker had left?

A. Yes, Mrs. Parker left before Mr. Winans came into the office.

Q. Did she mention the fact that her husband and Mr. Winans had had quite a hot argument about a week before? A. No.

Q. Ten days before? A. No.

Q. She didn't mention that. Now, you and Kenneth Abraham, as I understand it, shortly after this happened or shortly after the story came out in the newspaper, you kind of compared notes to refresh your memories as to what happened at this meeting?

(Testimony of Vawter Parker.)

A. I don't know whether we required notes, but we certainly talked it over.

Q. Well, the idea was you wanted to get the facts straight?

A. Well, we were trying—the newspaper story we were trying to straighten out what we knew about what happened. [931]

Q. Did Mr. Buell or anybody from the Title and Trust Company interview you sometime thereafter? A. Yes, they did.

Q. Can you tell us when that was?

A. Well, I would say it was a month or so, maybe more, after the story came out in the newspapers. I can't remember the exact date of it.

Q. Well, the story came out in the newspapers just two or three days after that deed was recorded?

A. I think the week end in the Hood River papers.

Q. You would say it was a month, more or less, after that?

A. At least a month, I would think so.

Q. At that time, who was it that interviewed you, Mr. Buell or somebody else?

A. Well, Mr. Buell was up there. Somebody was with him, but I think Mr. Buell did most of the talking.

Q. You told him your whole story of everything that had happened?

A. I think I told him what I knew about it.

Q. That is what I mean.

A. Whether I raised any objection as to whether

(Testimony of Vawter Parker.)

he was an adverse party to Mr. Winans, I suppose I might have, but so far as——

Q. You have told us today what you know of it, and you had told him then what you knew about it, and as far as you can recollect you had told him then what you have told us today? [932]

A. I think so. I do not know what notes he took on that, but he talked to me there that day about it.

Q. I am wondering why you didn't make this a warranty deed as to Lot 1 and a quit claim as to Lot 2. Did you consider that at all?

A. I think on the first day that there might have been some discussion about that, but by the time they were ready to take it, we went ahead and used only the one deed because at one time we had one deed, and I think that was on the Saturday, in which we were using a wording which is common in the ordinary bargain and sale deed.

Q. Bargain and sell?

A. "Bargain, sell and convey the following described real property." I think that was the original deed which we started off with Saturday morning or sometime Saturday, but by the time the thing got worked around and after some more of this discussion there, we changed that wording to "bargain, sell, and convey all of Ethel Winan's right, title, and interest in the property."

Q. But in the ordinary case in this kind of a transaction, wouldn't you ordinarily make a warranty deed subject to the rights of the Government?

A. Well, sometimes. I mean, I have.

(Testimony of Vawter Parker.)

Q. Did you know when you executed the deed whether it was the rights of the United States Government or a claim by the United States Government that created the defect? [933]

A. That was the defect, yes.

Q. So wouldn't you have thought that, aside from that claim, as far as anything Winans told you, he could warrant a title; could he not? I mean, if you except the claim of the United States Government?

A. Yes.

Q. Miss Winans could warrant her title?

A. I think she had—I was informed she had a good title from the State but not from the United States Government.

Q. That is right, the only difference in the title was a claim of the United States Government?

A. That is right; I think it was the only defect.

Q. Don't you think it would have been more appropriate to the circumstances to have had a warranty deed subject, however, to the rights of the United States Government in the 40 acres?

A. Might have been; however, we didn't use it at that time.

Q. Yes, I understand, but was the fact you didn't use it—now, Mr. Winans, I think, might have suggested this. I wonder if he suggested to you that he got a bargain and sale deed from the State of Oregon and, therefore, he thought that they ought to give a bargain and sale deed?

A. Well, as I remember it, I didn't hear Mr. Winans' testimony, but Mr. Winans, I think, received

(Testimony of Vawter Parker.)

the deed from a man by the name of Macrum or Macum, something like that.

Q. That is right, Macrum. Was that a bargain and sale? [934]

A. That is right, he didn't get a warranty deed, but the State gave Mr. Macrum what he referred to as a bargain and sale deed. I don't remember what Macrum gave Winans.

Mr. Buell: I think it is referred to in the statement——

The Witness: I have seen the deed but I don't remember.

Q. (By Mr. Jaureguy): In determining the type of deed that you were to draw, did Mr. Winans call attention to the types of deeds that had preceded him?

A. I don't know whether he called attention to them, but I had seen them. I think I had him bring in the papers.

Q. Oh, yes, he had a warranty deed from Macrum, from the State of Oregon, they call it a grant deed, which is a fancy name for a bargain and sale, I think, but was the matter discussed with you and Mr. Winans whether or not it would not be more appropriate to give a warranty deed subject to this exception?

A. I can't tell you who started the discussion that we would use a bargain and sale deed. That is the kind we used finally and we even changed that.

(Testimony of Vawter Parker.)

Q. Yes.

A. The first draft or so of it. I think we used the straight, which you use ordinarily in your office, bargain and sale deed. Then we amended it by putting in the clause subject—to change it all—“Subject to the right, title and interest in and to the property.”

Q. But the point I am asking is whether you can recall whether [935] or not there was any suggestion made by you or by Mr. Winans or by anybody else that the appropriate deed should be a warranty deed subject to the claims of the United States in the 40-acre tract?

A. I don't remember any discussion about using that type because we worked, stayed on a bargain and sale deed.

Q. Now while you were engaged in these matters that you have been telling about, did you have any consideration in your own mind to whether or not the purchasers were getting title insurance?

A. Some time before the transaction was closed, I began to feel that they were getting some advice somewhere due to the fact that Mr. Stegmann disappeared with a copy of this deed or he would have to go out every so often, I thought undoubtedly to talk to somebody.

Q. Well, the question I put to you is whether or not in your own mind you came to the conclusion that they were getting title insurance?

A. Some time during the middle of the day, I began to feel sure that they were checking either

(Testimony of Vawter Parker.)

with title insurance, or that maybe by abstract or with some lawyer or something on this property.

Q. When you suggested your going over to look at the title company's plat, didn't you really have in your mind, well, these people are probably getting title insurance over there anyhow [936] and so that they ought to be sure that the description is correct?

A. I don't know whether I had that in mind then, but after he had objected so strongly to my contacting the Title and Trust Company, I thought there must be—maybe they were doing something that they didn't want outside people to know that they were picking this property up. That sometimes happens.

Q. They would want to keep it secret for fear somebody else might muscle in and get it away from them?

A. By working on it or something else.

Q. That happens sometimes.

A. That is right.

Q. Did Mr. Winans ever tell you that he had had title insurance on this property?

A. Some time during this sale transaction I found out that Mr. Winans had once before had title insurance on this property.

Q. Where did you find that from?

A. Well, I presume that Mr. Winans told me. Now, it may not have been Mr. Winans. It may have been my partner, John Baker. I can't remember who first told me about it.

(Testimony of Vawter Parker.)

Q. Could it have been John Moore?

A. No, I don't think John Moore told me about it.

Q. You do not think John Moore told you about it?

A. I don't think I had any discussion with John Moore concerning this property prior to its coming out in the paper about the sale. [937]

Q. You did not call the title company and ask them about either whether Winans had had a policy or whether they had written a title report on that property?

A. Did I call the Title and Trust Company?

Q. Yes, I said did you call them?

A. No, I didn't call them. Now, I think that they—either before or after the deed was transferred on Monday I happened to be down in the Title and Trust Company.

Q. Tuesday morning?

A. Tuesday morning, that is right. I happened to be down in the Title and Trust Company, and I mentioned to Ed Miller, who is the title manager, that I was going to—had almost checked with him. I asked him if he had a plat of Lost Lake, of that township up there, and he said, "Yes." And I says, I told him I was going to check with him on it. He said yes, and I said well, I was interested in some property around it or something. He then told me something about—I told him the trouble I had had drawing a description on it, and he said, "Well, we insured it anyway." I said, "You insured that

(Testimony of Vawter Parker.)

land?" He said, "Yes." And, as I remember it, he told me yes, and I thought that was rather a strange thing, but I didn't say anything more and I dropped the subject. It wasn't an hour until probably I had discussed it with him again.

Q. I didn't get that last statement.

A. It was not probably an hour or so until after all this stuff [938] came out, and I talked it over with him again.

Q. What do you mean, "all this stuff."

A. Well, that this property had been transferred and the deed of record. It was to cause quite a bit of discussion around town.

Q. You mean when the Government——

A. That the Government put in a claim of it.

Q. But this first conversation you had, you say, was Tuesday morning?

A. I think it was Tuesday morning.

Q. Before lunch? A. Yes.

Q. You did not know the deed had been recorded then, I don't suppose?

A. I don't suppose so.

The Court: Had the deed been recorded at that time?

The Witness: Whether the deed had been recorded is a thing that I can't remember.

The Court: Had you received the \$95,000 check?

The Witness: Well, I have tried to remember back whether I did talk to him that morning as I was going to work—his office was in the same build-

(Testimony of Vawter Parker.)

ing as our office is—or whether I talked to him after the deed had been recorded.

Q. (By Mr. Jaureguy): You mean it was delivered to Mr. Abraham? [939]

A. That is right.

Q. You do not know whether you talked to Mr. Miller before you had your meeting with Mr. Abraham or whether you talked with him after that meeting with Mr. Abraham? A. That is right.

Q. At any rate, when you talked to him about it, why, he recognized the property, the particular property?

A. Well, I had trouble drawing the meander line along this lake.

The Court: Why were you interested in that meander line at that time if you had already transferred the deed?

The Witness: Well, it was just a general discussion I had with them there.

The Court: This was just merely an academic discussion, curiosity?

The Witness: I was just down there, happened to be discussing, I didn't know that they had insured it until he told me, and when he told me this I thought, "Well, what happens here?" But I didn't say anything more then. I dropped the subject with him.

Q. (By Mr. Jaureguy): I suppose you are like I am; you do not draw descriptions of meander lines around lakes every day.

A. No, very few meander lines, and that was one

(Testimony of Vawter Parker.)

of the things particularly on Saturday before they got into it on Monday that they had had so much trouble with, was taking this exception out along this meander line. [940]

Q. You could not tell us what your best recollection is, whether you told him that before you had your meeting with Abraham or after?

A. No, sir, because I have tried to think several, quite a few times since then when I talked to him about it.

Mr. Jaureguy: That is all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan:

Q. This conversation, was it on Saturday or Monday that the suggestion was made that you go over to the Title and Trust Company to look at the plat? A. When I made the suggestion?

Q. Yes.

A. As I remember it, I believe that was on Monday that I wanted to go to the Title and Trust Company and look at the plat.

Q. Could it have been Mr. Stegmann said at that time that the reason you should go to the City Engineer's is because it is probably an engineering problem and you needed his equipment to do that work?

A. No, because you had an engineer's problem and they worked with the City Engineer on Satur-

(Testimony of Vawter Parker.)

day. Now, if Mr. Haines worked there on Monday morning next——

Q. The County Engineer is what I was——

A. No, it was the City Engineer, I mean, that is where they [941] worked. I don't know——

Q. They worked there on Saturdays, you say?

A. In the City Engineer's?

Q. In the City Engineer's. Now, Mr. Haines was not present on Monday, to your recollection?

A. I don't remember Mr. Haines being present at all on Monday.

Q. Although there was still a problem of working out the description on Monday?

A. The main problem of description on Monday was the excepted piece of property that was coming out.

Q. That was always the problem?

A. Of the additional excepted property plus the fact that, well, it just seemed so many times we would get a description which seemed perfectly all right to me which did not meet with Mr. Stegmann's approval, and we would work it over again.

Q. You did go over to the Engineer's office at least one time when Mr. Haines and Mr. Stegmann were there?

A. I went over. At one time, I think it was on a Saturday, I am pretty sure it was Saturday, Mr. Haines was over there, and, I think Mr. Stegmann was there or went with me. Maybe he went with me over there. I remember being over there at the City Engineer's office.

(Testimony of Vawter Parker.)

Q. Were they using their facilities over there?

A. They were using their facilities there. Now, their facilities there were not maps of Lost Lake. They were maps—they just [942] had drafting boards there that they could work on and I suppose one of these things that you can compute angles on and get them drawn on the map so they reflect a true angle on a map.

Q. They were using those?

A. Well, they had them laying there. I suppose they would use them.

Q. Now, at this time the discussion you referred to that took place between Mr. Winans and Mr. Stegmann regarding some problem in the title, that took place in your office?

A. The discussion between Mr. Winans and Mr. Stegmann as to the defect of title took place in our office there, first on Saturday, and then it was again discussed on Monday.

Q. Who was present on Saturday?

A. Who was present on Saturday? Mr. Winans, Mr. Stegmann, and part of the time when, while we were discussing the title, I believe Mr. Haines was in there.

Q. Now, this office that you are describing, it is a fairly large room; is that correct?

A. That is correct.

Q. How big is your office?

A. Oh, fourteen by sixteen, I imagine.

Q. Were Mr. Haines and Mr. Stegmann on

(Testimony of Vawter Parker.)

Saturday working together on this description, or was Mr. Winans assisting them?

A. They seemed to have all been on a survey, and they seemed to all work on a description, but Mr. Haines was trying to take out [943] the first excepted portion and come around on this meander line because they had, instead of following the lake, just say following the meander line of the lake, they came around so many feet and so many chains, whatever they used, and so many degrees each time.

Q. During the course of this work there in the office, were the parties in separate groups working on this, Mr. Stegmann and Mr. Haines working together with Mr. Winans, and Mr. Stegmann and Mr. Haines working with Mr. Winans and you discussing the matter?

A. No, there was only one desk there. There was a table over in the corner, but they were all, they would all be sitting around the table there if they were going to be discussing any matter, but the table was not large enough—I think they had a rather large map, as I remember—for they wanted to work and figure out this excepted portion on this, following this meander line around the lake.

Q. This conversation arising regarding Exhibit 311 that you saw here—that is the paper purportedly written out by Mr. Winans which you did not write out? , A. Yes.

Q. That took place on Monday or on Saturday?

A. As I remember it, I believe that took place on Monday.

(Testimony of Vawter Parker.)

Q. You explained to Mr. Stegmann that it was not necessary that he sign it because it was a change in the deed?

A. I was talking merely to Mr. Winans then because Mr. Winans [944] had asked Mr. Stegmann to sign it, or I had asked for him, I don't know which, but it was presented there, and my explanation of why it was not necessary after Mr. Stegmann refused was directed to Mr. Winans.

Q. At the time Mr. Abraham called you up on Saturday night—Monday night, rather—saying that he was interested in this deal, did you tell him anything about the possibility of a defect in title?

A. I don't believe so at that particular time.

Q. So your first recollection of the matter being brought up was at the time that Mr. Winans spoke to Mr. Abraham, as he testified here previously?

A. Yes, when Mr. Winans spoke to Mr. Abraham in our office the next morning was the first time that I had heard it discussed with Mr. Abraham, or I had discussed it.

Q. You say you were under the impression that Mrs. Parker was backing Stegmann?

A. I don't know as anything directly was made to give me the impression, but that is the feeling I had that it was either backing Mr. Stegmann or was representing someone who was backing Mr. Stegmann.

Q. You made no representation to her of any of your knowledge of that fact, did you?

(Testimony of Vawter Parker.)

A. I don't remember that I did. I think the only discussion that we had with her that morning was about the property and what [945] a nice property it was, and whether we discussed what it was to be used for I don't know.

Mr. Ryan: That is all the questions I have.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Parker, you had before you at the time you drew this deed that was finally signed certain instruments, didn't you? A. Yes.

Q. Like the option?

A. The option which Mr. Winans had given to Mr. Stegmann. I think that was in the office.

Q. And the copy from which you worked was a signed copy, one signed by Winans and Ethel and also by Walter Stegmann; was it not?

A. Well, as I remember, I think they was all signed.

Q. Well, we already have a copy of an option in evidence, but here is one, a yellow copy of an option that has three signatures on it, and I think it has your initials on it, too. That is Exhibit 305. First of all, in the lower right-hand corner, are those your initials? A. Yes, they are.

Q. Is that the option from which you worked?

A. It is.

Q. Now, then, were you also given a copy of an Exercise of [946] Option?

(Testimony of Vawter Parker.)

A. There was another piece of paper which——

Q. Exhibit 307.

A. I don't believe it was quite this size, which Mr. Stegmann had given saying that he was going to exercise the option.

Q. Well, look at 307 there and see whether that is the instrument that you also used in the preparation of this deed? A. Yes.

Q. Now, did you, down through the time that you finally delivered the deed and received the money from Mr. Abraham, have anyone in your presence at any time say that anybody other than Stegmann was doing the buying? A. No.

Q. No one ever suggested that there was anybody other than Stegmann?

A. No, the only suggestion that anybody was even interested was this lady that Mr. Abraham said had given him the \$95,000 check.

Q. You thought she had some interest in the matter?

A. That was confirmed that morning when she came in.

Q. You didn't say or complete telling us just what happened when she left your office by your private door on that Tuesday morning. What was the apparent reason for her leaving at that time?

Mr. Jaureguy: I want to object to that as calling for a conclusion of the witness. [947]

Mr. Krause: All right, tell us just what occurred immediately before Mrs. Parker left your office?

(Testimony of Vawter Parker.)

A. Well, we were there and we waited for Mr. Winans to come in.

Q. Now, "we" is Mr. Abraham and yourself?

A. Mr. Abraham, Mrs. Parker and myself.

Q. That is right.

A. Were in there waiting for Mr. Winans, and when Mr. Winans came up the stairs and came into the outer office, I think I announced to—said that that was Mr. Winans now, and Mrs. Parker excused herself and went out the side door and down—well, she went out the door. I don't know where she went from there.

Q. This door from your office led into the hallway in the building?

A. Into a hallway, not out into a waiting room. Mr. Winans came in through the waiting room.

Q. The last form of deed that you gave Mr. Stegmann a copy of was the one that was also finally executed; is that correct?

A. I am pretty sure that that is the one. The one he took out of the office the last time was the one in which we inserted the—I mean which we had kept and delivered after it was signed to Mr. Abraham.

Q. This deed, of course, copy of which you had given to Stegmann and he carried away, was one that had been prepared right there in your office?

A. Yes. [948]

Q. Had Mr. Stegmann indicated whether that deed was satisfactory or not satisfactory?

(Testimony of Vawter Parker.)

Mr. Jaureguy: I am going to object to that as not in any way binding on the Parkers.

The Court: All right. Go ahead.

Mr. Krause: Well, except if Mr. Stegmann is there, I——

The Court: He knows my rulings.

Mr. Jaureguy: Yes, I know, and with exceptions.

The Witness: The copy which I gave to Mr. Stegmann and he left the office with on Monday afternoon apparently was satisfactory with Mr. Stegmann; however, he stated, he wanted to know if he could have a copy of that and he took a copy and he left the office. I presumed he was coming back as he had done several times before, and I don't believe he came back.

Q. He made no suggestion of any further change? A. No.

Q. And the original of that copy you gave him was the one that Ethel signed and that you delivered to Mr. Abraham the next morning? A. Yes.

Mr. Krause: I think that is all.

Redirect Examination

By Mr. Buell:

Q. Mr. Parker, Mr. Jaureguy asked you if you overheard or if you heard what Paul Winans told Mr. Abraham about the defects in [949] the title, but I don't think it was brought out whether you heard what Mr. Abraham said to Mr. Winans after Mr. Winans had made his explanation. Do you remember what Mr. Abraham said?

(Testimony of Vawter Parker.)

A. There was some discussion there. The only one thing that I happen to remember that Mr. Abraham said to him was that he didn't believe that these people, which I think were the words he used, were interested in advice from anybody here or in Hood River.

Q. During the time that Mrs. Parker was there in your office with Mr. Abraham, did she say anything, or did you hear her say anything, about what use the property was going to be put to?

Mr. Jaureguy: I object to that as not proper re-direct. He has gone over all this before.

Mr. Buell: If that is true, I am sorry.

The Court: I am going to let him answer the question. I am interested in that question myself. Go ahead.

The Witness: There was some discussion about the property and I got the impression from what was said—I can't remember the words—that it was still a resort property, or something of that nature, which either Mr. Stegmann or his son was interested in. Whether we discussed his son, I don't know, that morning, but he had mentioned his son the day before.

Mr. Buell: I have no further questions.

Mr. Jaureguy: I have one or two, your [950] Honor.

(Testimony of Vawter Parker.)

Recross-Examination

By Mr. Jaureguy:

Q. When you went over to the Title and Trust Company on Tuesday and they told you they were insuring it, did you mention to them this alleged defect or claim of defect that you had heard about?

A. At that time on that morning, the only question I asked him, I asked him, "Did you insure that back piece?"

Q. Yes.

A. And he said, I believe he told me they had. I don't know what words he used on it. I don't remember whether we had any more discussion at that time. I did right afterwards, after the question came up about the United States Forest Service claiming part of it.

Q. Yes, but you asked him whether they, that is, you distinguished the back forty from the Lot 1 and asked him whether they insured the back forty?

A. I asked him, "Did you insure the back forty?" I remember that because it surprised him at the time.

Q. Then you did separate the number, anyhow?

A. I don't know whether I did or not. I just asked about that.

Q. Did you indicate to him that there was some kind of a—you had heard about some kind of a defect in the back forty?

(Testimony of Vawter Parker.)

A. I don't think I discussed it any further with him.

Q. I want to show you here Exhibit 303—I think that is the number—and ask you whether you have ever seen that before? [951]

A. I don't know whether I saw this, but I saw a map or a sketch with which they figured it up, using these lines back from there.

Q. You are referring to the horizontal lines up at the north part?

A. The lines running east and west.

Q. East and west?

A. Yes, east and west, I believe, right here (indicating). Whether they had this one or some other map which they had—because I wondered about this and the description and why they had to have it.

Q. The witness has been pointing to lines starting at the meander corner at the northeast corner and proceeding thence westerly; that is correct, isn't it? A. Yes.

Q. I am just asking if that is what you were pointing at? A. Yes.

Q. Do you know—now, this might possibly refresh your memory, these figures down at the left margin which is down below, “8.346 a,” does that refresh your memory as to whether you have seen this identical piece of paper before?

A. I can't remember seeing these figures on here. Let me see.

The Court: Any further questions?

Mr. Jaureguy: I think he is just trying to see

(Testimony of Vawter Parker.)

if there is anything further on there, but there will be no further questions unless his answer calls for them. [952]

The Witness: What I was trying to explain to you a while ago here was on the original exception in the southeast—which I believe this is the southwest corner. I may be wrong, but on the original description, the southwest corner of Lot 1, I believe I called it southeast.

Mr. Jaureguy: I think so, too.

A. Then when they changed it and they took in additional land they moved, it would have been north along that line.

Q. But, I take it, you are not now able to say whether you have ever seen this exhibit before?

A. I have seen a map like that, but I won't say that is the Exhibit.

Q. You mean a map like it, you mean that it has the same markings, except it may be on a different piece of paper?

A. No, what makes me remember it is the edge of the lake plus the east and west lines around here (indicating).

Q. Up on your northerly part, you are talking about? A. That is right.

Mr. Jaureguy: That is all.

The Court: That is all, Mr. Parker.

(Witness excused.)

The Court: We will take a 10-minute recess.

(Recess taken.) [953]

KENNETH ABRAHAM

recalled, testified as follows:

Cross-Examination

By Mr. Krause:

Q. While we are still on this matter, your Honor, could I offer in evidence this Exhibit Mr. Parker identified? It is 305. That is the option from which Mr. Parker was working in drawing the deed.

The Court: It may be admitted.

(Whereupon, the document previously marked Defendant Winans' Exhibit 305 for identification was received in evidence.)

Examination by the Court

Q. Mr. Abraham, I do not know whether the record discloses the precise time at which you had your conversation with Mrs. Parker relative to the information which you received from Mr. Winans. Was that before the name, Chet L. Parker, was written into the deed and before the revenue stamps were affixed to the deed, or was it after that time?

A. As I recollect it, your Honor, it was just as soon as I came back from the Court House. It would be before I put the names on the—the grantee's name on the deed and put the revenue stamps on it.

The Court: That is all. [954]

Cross-Examination

By Mr. Jaureguy:

Q. Well, as a matter of fact, was it not after you left the Court House and got back to your office?

(Testimony of Kenneth Abraham.)

A. No, I don't think I went back. I don't believe I went back to my office with Mrs. Parker. I might have.

Q. She paid you, I guess, for your services, and you wrote her a receipt, and you got that receipt in your office, and that was when you told her that; is that not correct?

A. No, I believe I told it to her when I put the name on the deed before I put the revenue stamps on, when I came back into the Court House I think was the first thing I said to her.

Q. After you got through at the Court House did you go back to your office with her?

A. I cannot recall whether I did or not. I might have. I cannot recall that.

Q. But, as I understand it, your recollection is very vague about whether you even told her that at all?

A. My recollection is vague about whether I told her that at all, but I did check back into the notes that Mr. Lindsay made when he interviewed me in October, and when Mr. Buell interviewed me to the effect that I had said that, that I had told her about the defect.

Q. Yes, but if your recollection is very vague as to whether you told her at all, why then, I can understand where you probably [955] must be vague as to when and where you told her.

A. That could possibly be true, but I think I must have told it to her before I came into the Court House.

(Testimony of Kenneth Abraham.)

Q. Are you not really being influenced by what you think you must have done rather than what you really did do? A. That may very well be true.

Mr. Jaureguy: That is all.

Mr. Buell: That is all.

The Court: That is all.

(Witness excused.) [956]

BERT HOLTBY

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Bert Holtby, and you reside at Parkdale, Oregon; is that right?

A. That is right.

Q. What is your position?

A. District Ranger, Hood River District.

Q. Is that in the United States Forest Service?

A. That is right.

Q. Is there any particular name of the district other than just Hood River District?

A. That is the official title. It is sometimes called Parkdale District.

Q. Now, within your district is located the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 16, which is involved in this Winans, Parker lawsuit; is it not?

A. That is right. It is 1 South, 8 East, I believe.

Q. How long have you had your present position

(Testimony of Bert Holtby.)

as District Ranger? A. At Parkdale?

Q. Yes.

A. I was transferred to Parkdale effective April 1, 1951. [957]

Q. Have you ever had any conversation with Paul Winans relative to a possible exchange of the— with the Forest Service of the Lost Lake property which the Winans claimed to own?

A. Yes, shortly after I arrived on the District, Mr. Winans called and indicated in the telephone conversation that he would like to confer with me in regards to a possible exchange in the Lost Lake area, and I told him that I was not familiar with the file and I would get in touch with him later after I had reviewed the case and had gotten some information on it, and we left it that way.

Q. Did you ever hear from him again?

A. No, I don't believe we ever—I don't believe we talked about it either personally or by phone again.

The Court: You came to that office in 1951; is that correct?

The Witness: I was transferred to Parkdale April 1, 1951.

Q. (By Mr. Buell): Mr. Holtby, approximately how many acres of Forest Service land is there within your jurisdiction?

A. There is a hundred thousand acres in the Hood River District.

Q. Do you have a number of deputies or other

(Testimony of Bert Holtby.)

Forest Service personnel working under you in connection with your duties? A. Yes, we do.

Q. How many year-around personnel do you have?

A. We have about ten at the present time. It varies from time to time due to transfers.

Q. During the summer, are there additional personnel? [958]

A. Yes, we have from 10 to 15 temporary employees in the summer in addition to our regular employees.

Q. Now, would you tell us, please, what your duties are with respect to closing the forest under your supervision to entry by the public at various times of the year?

A. Well, the main closure that we are concerned with is the fire season closure, and whenever the fire season gets to the hazardous point that we feel it is necessary to have a closure, we recommend to the supervisor that one of several types of closures be put into effect. Generally, under our Federal laws, Federal regulations I should say, those closures are put into effect on National Forest land. In the Hood River valley, because of the fact that we are involved in a State protective area, it is sometimes a little more difficult to obtain a closure, and it is necessary to go through the Governor to get the State closure, but, in effect, we have the same thing. We have either a permit or an absolute closure on the area.

Q. With respect to the Forest Service lands within your district, you do not have to go to the

(Testimony of Bert Holtby.)

Governor to obtain a permit to close them to the public, do you?

A. We would not have to, no.

Q. You mentioned absolute closure. Is there any other kind of a closure that——

A. Yes, the common one is a permit closure where we allow people to enter the area for their regular work, such as loggers or [959] people that reside in the area.

Q. How do they get a permit? Where do they go to get a permit to enter the area?

The Court: What difference does it make? What is the relevancy of all this testimony? Why don't you get to the point?

Mr. Buell: I believe we are entitled——

The Court: You are not entitled at 5:15. I held this court open for you so you could put on this one witness. If we are going to stay here until six o'clock, we ought to know about it. You said you would dispose of this witness in fifteen minutes.

Mr. Buell: I think he has only been on the stand a couple minutes, your Honor.

The Court: At the end of fifteen minutes, we are going to close.

Q. (By Mr. Buell): Where do they go to get a permit to enter the area, Mr. Holtby?

A. It is set up in the permit closure. It would probably be the Parkdale Ranger Station.

Q. Now, since the time of the Winans' sale, have you caused or had any additional Mt. Hood or Bull Run Timber Reserve Forest signs to be posted along

(Testimony of Bert Holthy.)

the boundary of the 40-acre tract to which the Government claims title in this case?

A. No, I have not.

Mr. Buell: No further questions. [960]

Cross-Examination

By Mr. Jaureguy:

Q. Well, do I understand that whether you need it or not you go to the Governor to get a closure of the Government's forest lands?

A. No, that is not right. That is not what I said.

Q. You said you would not have to go to the Governor for a permit?

A. No, we do not necessarily have to. Sometimes we find it more convenient, and it works better because of the State protective area.

I only deal with the National Forest protective area, and the State attends to the——

Q. But, ordinarily, if you had a closure of national lands, you also have a closure of adjacent State lands, don't you?

A. Quite often, because we go through State lands to get into National Forest lands.

Q. So that both of them generally are closed at the same time?

A. Generally true.

Mr. Jaureguy: That is all.

Mr. Ryan: No questions.

Mr. Krause: No questions.

(Witness excused.)

The Court: We will recess until tomorrow morning at nine-fifteen.

(Evening recess taken.) [961]

(Wednesday, February 4, 1953, the trial was resumed at 9:15 a.m., and the following proceedings were had:)

RETLAW HAYNES

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Haynes, would you tell the Court what your occupation is, please?

A. At the present time I am a structural engineer.

Q. Employed by whom?

A. Corps of Engineers, United States Army.

Q. That is here in Portland, is it?

A. Yes, sir.

Q. During the summer of 1951, did you have occasion to do any surveying on property adjacent to Lost Lake being sold by Mr. Paul Winans?

A. I did.

Q. Do you have any independent recollection of the dates on which you were on that property?

A. Well, the first time was on or about August 18, 1951.

Q. You were retained by Mr. Winans, were you, to do some work in connection with the property?

(Testimony of Retlaw Haynes.)

A. Yes. [962]

Q. What were you supposed to do?

A. Well, sir, I was supposed to establish the southwest corner of Lot 1, I believe, then run down the south boundary to where it intersected the lake, the north boundaries having been already established by the General Land Office.

Q. Now, on the occasion of your first trip to Lost Lake, was there anybody along with you?

A. Yes, I had an engineer with me by the name of Lawrence Bogar.

Q. Is he also employed by the Army Engineers?

A. Yes.

Q. Then where did you meet Mr. Winans first?

A. At Hood River.

Q. At his place or——

A. No, he came down to Hood River and escorted us up to the place at Dee.

Q. At Dee? A. Beg your pardon?

Q. At Dee?

A. Well, wherever his home is.

Q. Then when you went up on the property, who else was there along with you besides Mr. Bogar, Mr. Winans and yourself?

A. Well, there was Walter Stegmann, and he had another man along with him at that time. I don't just recall who it was, but I have been informed it was his brother, Ross Winans, and I believe [963] two other Winans nephews.

Q. You place that first trip to the property as on or about August 18th?

(Testimony of Retlaw Haynes.)

A. To the best of my recollection.

Q. Now, when you went up to the property, did you have any direct conversations with Mr. Stegmann, yourself, as to what the transaction was or as to what his interest in the transaction was?

A. No, I don't believe I did. That was not part of my job.

Q. Did you know or have any information as to whether or not there was any sale of the property coming up in the future?

A. Well, it is pretty hard to recall exactly, but I had the impression that the property was being sold.

Q. Then were up—or when was the next occasion that you were up on the property after you went up on or about the 18th?

A. I am quite sure it was the following week end, probably the 25th and 26th.

Q. Incidentally, on relating or going back to the first trip, were you there for just one day or more than one day? A. One day the first time.

Q. That was a Saturday, was it, or do you recall? A. I am sure it was a Saturday.

Q. Now, on the occasion of the second trip, did any other engineer go along with you? That would be the one on the following week, the 25th? [964]

A. Yes, I brought one of the engineers from the Army again to help me because Mr. Bogar could not be there.



